

324.767

Ar4d

1911



UNIVERSITY OF
ILLINOIS LIBRARY
AT URBANA-CHAMPAIGN
BOOKSTACKS



Digitized by the Internet Archive
in 2014

DIGEST
OF THE
ELECTION LAWS
OF THE
STATE OF ARKANSAS

IN FORCE AUGUST 12, 1911

ISSUED BY
EARLE W. HODGES
SECRETARY OF STATE

324.767

Ar4d

1911



DIGEST
OF THE
ELECTION LAWS
OF THE
State of Arkansas

ARTICLE III.

CONSTITUTION OF THE STATE OF ARKANSAS.

FRANCHISES AND ELECTIONS.

SECTION 1. Every male citizen of the United States, or male person who has declared his intention of becoming a citizen of the same, of the age of twenty-one years, who has resided in the State twelve months, and in the county six months, and in the voting precinct or ward one month, next preceding any election, where he may propose to vote, shall be entitled to vote at all elections by the people.

SEC. 2. Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted whereby the right to vote at any election shall be made to depend upon any previous registration of the elector's name; or whereby such right shall be impaired or forfeited, except for the commission of a felony at common law, upon lawful conviction thereof.

SEC. 3. All elections by the people shall be by ballot. Every ballot shall be numbered in the order in which it shall be received, and the number recorded by the election officers on the list of voters opposite the name of the elector who presents the ballot. The election officer shall be sworn or affirmed not to disclose how any elector shall have voted, unless to do so as witnesses in a judicial proceeding to contest an election.

28013 Sec. of state

SEC. 4. Electors shall, in all cases (except treason, felony and breach of the peace), be privileged from arrest during their attendance at elections and going to and from the same.

SEC. 5. No idiot or insane person shall be entitled to the privilege of an elector.

SEC. 6. Any person who shall be convicted of fraud, bribery or other wilful and corrupt violation of any election law of this State shall be adjudged guilty of a felony, and disqualified from holding any office of trust or profit in this State.

SEC. 7. No soldier, sailor or marine in the military or naval service of the United State shall acquire a residence by reason of being stationed on duty in this State.

SEC. 8. The general elections shall be held biennially, on the first Monday of September; but the General Assembly may by law fix a different time.

SEC. 9. In trials of contested elections and in proceedings for the investigation of elections no person shall be permitted to withhold his testimony on the ground that it may criminate himself or subject him to public infamy; but such testimony shall not be used against him in any judicial proceeding, except for perjury in giving such testimony.

SEC. 10. No person shall be qualified to serve as an election officer who shall hold at the time of election any office, appointment or employment in or under the Government of the United States, of of this State, or in any city or county, or any municipal board, commission or trust in any city, save only the justices of the peace and aldermen, notaries public and persons in the militia service of the State. Nor shall any elector be eligible to any civil office to be filled at an election which he shall serve save only to such municipal or local offices, below the grade of officers, as shall be designated by

SEC. 11. If the officers of any election shall unlawfully refuse or fail to receive, count or return the vote or ballot of any qualified elector, such vote or ballot shall nevertheless be counted upon the trial of any contest arising out of said election.

SEC. 12. All elections by persons acting in a representative capacity shall be *viva voce*.

AMENDMENT NO. 2.

Every male citizen of the United States, or male person who has declared his intention of becoming a citizen of the same, at the age of twenty-one years, who has resided in the State twelve months, in the county six months, and in the precinct or ward one month, next preceding any election which he may propose to vote, except such persons as may for the commission of some felony be deprived of the right to vote by law passed by the General Assembly, and who shall exhibit a poll tax receipt or other evidence that he has paid his poll tax at the time of collecting taxes next preceding such election, shall be allowed to vote at any election in the State of Arkansas. Provided, that persons who make satisfactory proof that they have attained the age of twenty-one years since the time of assessing taxes next preceding said election and possess the other necessary qualifications, shall be permitted to vote; and, provided, further, that the said tax receipt shall be so marked by dated stamp or written endorsement by the judges of election to which it may be first presented as to prevent the holder thereof from voting more than once at any election.

[Declared to be adopted by the Speaker of the House on the 12th day of January, 1893; the vote standing for amendment 75,940; against the amendment 56,601; and after due attestation and filing was so proclaimed by the Governor.]

XXIII.—ELECTIONS—ORDERLY CONDUCT OF —SUFFRAGE PROTECTED—PENALTIES FOR VIOLATION (j).

SECTION.

- 1665. Dramshops to be closed on day of election.
- 1666. Fraud, etc., by officers, and illegal voting, a felony.
- 1667. Misbehavior of judge or clerk of election.
- 1668. Punishment of judge for putting false ballot in box.
- 1669. Penalty for deceiving elector, etc.
- 1670. Altering or erasing ballot.

SECTION 1665. All dramshops and drinking houses in any county, city, town or township shall be closed during the day of any election held therein, and the succeeding night, and any person selling or giving away any intoxicating liquors during said day or night in any county, city, town or township in which any such election may be held shall be punished by a fine of not less than two hundred dollars for each and every offense, or imprisoned not less than six months, or both (k). *Act January 23, 1875, section 22.*

SEC. 1666. Any election officer who shall fraudulently and corruptly permit any person to vote illegally, or refuse the vote of any qualified elector, cast up or make a false return of said election, or any person who shall vote when not a qualified elector, or vote more than once, or bribe any one to vote contrary to his wishes, or intimidate or prevent any elector by threats, menace or promises from voting, shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years.

SEC. 1667. If any judge or clerk of any election or any other person concerned in the conducting of

(j) Any person who shall be convicted of fraud, bribery or other wilful and corrupt violation of any election law of this state shall be adjudged guilty of a felony, and disqualified from holding any office of trust or profit in this State. *Art. III, Sec. 6, Const.*

For other offenses committed by violating the election laws, see Secs. 2776, 2783, 2798, 2802, 2821, 2823, 2824, 2825, 2826, 2838. See *Mason v. State*, 55—529.

(k) The annual school meeting for the election of school directors is not an election within the meaning of this section. *Stout v. State*, 43—413.

any election, shall neglect, improperly delay or refuse to perform any of the duties required by law, having undertaken to do so, or shall be guilty of corruption, partiality or manifest misbehavior in any matter or thing appertaining to such election, or shall unduly attempt to influence the election, he shall forfeit and pay the sum of two hundred dollars, to be recovered by indictment, or by action of debt, in the name of any person who may sue for the same.

SEC. 1668. Any judge of the election who shall, after proclamation made of the opening of the polls, put a ballot into the ballot box, except his own ballot, or such as may be received by him in the regular discharge of his duty, shall, on conviction thereof, be punished as provided in section 1666.

SEC. 1669. Any person who shall furnish any elector who can not read, with a ballot, informing him that it contains a name or names different from those which are written or printed thereon, with an intent to induce him to vote contrary to his inclination, or who shall fraudulently change a ballot of any elector, by which said elector shall be prevented from voting for such candidate or candidates as he intended, shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars. *Ib.*, sections 20, 21, 28 and 30.

SEC. 1670. Every person who shall alter, change or erase the ballot of any voter, against or without his consent and knowledge, either before or after such ballot shall have been deposited in the ballot box, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than twenty dollars. *Act February 21, 1859, section 3.*

SEC. 1746. Every person who shall make any bet or wager upon the result of any general or special election in this State shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than fifty dollars. *Act February 21, 1859; amended by Act 72, 1911.*

CHAPTER LVII.

ELECTIONS (a).

GENERAL ELECTIONS.

SECTION.

2762. General election; time of holding.

STATE AND COUNTY BOARDS OF ELECTION COMMISSIONERS.

2763. State board created; its duty in appointing county boards; qualifications of; appointments, how made; notice to be given; oath to be taken and filed.

2764. Tenure of office for county commissioners; organization of board; quorum.

2765. Appointment of judges of election; how and when made; vacancies; how filled.

2766. Vacancies in county boards; how filled.

QUALIFICATION OF ELECTORS.

2767. Constitutional requirements.

2768. No idiot, felon, or army or navy officer whose residence is acquired by his station, or other person who has not the specific qualifications required by law, shall vote; may be examined.

POLL TAX RECEIPT.

2769. Fixes time when name omitted may be put on list. Supplemental assessment. Penalty. Duty of clerk.

2770. Person paying poll tax entitled to separate receipt and name on collector's official list, even if he refuses to pay other taxes due.

2771. Official list of poll taxes paid to be filed, when. Clerk to record and give election commissioners copy. They to furnish printed copies to judges and clerks of election. Fees for printing and clerk.

(a) Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted whereby the right to vote at any election shall be made to depend upon any previous registration of the elector's name, or whereby such right shall be impaired or forfeited, except for the commission of a felony at common law, upon lawful conviction thereof. *Art. III, Sec. 2, Const.*

SECTION.

2772. "Time for collecting taxes" defined. Time elector may vote under poll tax receipt. Auditor to print on blanks and election commissioners to print on lists furnished election judges. Auditor furnishes collector blank receipts and all unused returned. If not, collector charged with and must pay to get quietus.
2773. Elector whose name is on list may vote without showing receipt, how. Duty of election clerk. Judges may require voter to identify himself. If, voting out of county where tax paid to show receipt or certificate of clerk that he is on list.
2774. Minors attaining majority since time for assessing may vote without receipt.
2775. Receipts to be stamped by judges.
2776. Officers failing to comply with this Act guilty of a misdemeanor.

NOMINATION OF CANDIDATES AND CERTIFICATION THEREOF.

2777. How candidates shall be certified; amount of fees for each candidate; how credited.
2778. Nomination fee may be paid into State treasury, when. How credited. Duty of Secretary of State, auditor and county clerk.
2779. Certificates of nomination; with whom filed.
2780. Time of filing certificates of nomination.
2781. Errors to be corrected; how and by whom.
2782. Secretary to certify list of candidates to county commissioners.
2783. Felony to falsely make, suppress, forge or destroy certificates, etc.

DECLINATION OF NOMINATION.

2784. Candidate declining not to be certified; how to decline; name not to be printed.

SUBMISSION OF AMENDMENTS AND OTHER QUESTIONS.

2785. Proposed amendments and other questions; how submitted.

PUBLICATION OF NOMINATIONS AND OTHER QUESTIONS.

2786. Publication of what, how, when, and by whom.

THE BALLOTS.

2787. Number of, for each precinct; when and by whom delivered to judges.
2788. Ballots to be furnished at the expense of the counties and municipal corporations.

SECTION.

- 2789. Number of ballots to be provided; ballots not furnished by commissioners not to be counted, but to be preserved.
- 2790. Ballots to be uniform and contain only the names of certified candidates.
- 2791. Election commissioners shall put on ticket "For road tax," and "Against road tax." Canvass returns and declare results.

FORM OF BALLOT.

- 2792. Form of ballot given.

BALLOT BOXES, POLL BOOK AND SUPPLIES.

- 2793. County commissioners to provide; how arranged; supplies furnished.
- 2794. To whom delivered; his duty.

POLLING PLACES, HOW ARRANGED, ETC.

- 2795. Booths to be furnished; number of; how arranged.
- 2796. Instructions to electors, to be posted; where; what to contain.
- 2797. Election judges to post copy of constitutional amendments submitted in booth and three near; who to furnish.
- 2798. Penalty for violating preceding sections.

JUDGES OF ELECTION.

- 2799. Qualifications of judges.
- 2800. Tenure of office.
- 2801. Persons betting on elections not competent as judge or clerk.
- 2802. Misdemeanor for person betting on election to act as judge or clerk.
- 2803. In case of absence of judges appointed, how vacancies filled.
- 2804. Judges to appoint clerks.

OATH OF JUDGES AND CLERKS.

- 2805. Who to administer oath; form.
- 2806. Oaths required of clerks.
- 2807. When judges to administer oaths to each other and to clerks.
- 2808. Certificate to poll books; form and by whom made.

SHERIFF TO MAKE PROCLAMATION.

- 2809. Of time and place of holding; officers to be elected.
- 2810. To give public notice thereof.

MANNER OF VOTING AND CONDUCTING ELECTION.

- 2811. Elections to be by ballot.

SECTION.

- 2812. Opening and closing polls; time of.
- 2813. Sheriff to police precincts; duty of.
- 2814. No one permitted to be within fifty feet of polling places only as admitted to vote except the sheriff or deputy. *Proviso.* Witnesses in cases of challenge may be admitted; voters not to occupy a booth longer than five minutes; when vote is deposited voter must retire.
- 2815. Duty of judge to receive ballots; manner of receiving and depositing.
- 2816. Duty of clerk to register names of electors; manner of.
- 2817. Manner of preparing and depositing ballot.
- 2818. Spoiled ballot to be returned to judges.
- 2819. Manner of preparing ballots for persons who can not read or write, or are physically disabled.
- 2820. Ballot to have the initials of one of the judges.
- 2821. Penalty for carrying any ballot outside of polling place.
- 2822. Different races, how to vote.
- 2823. A felony for officers to electioneer on election day, or for any one to intimidate, or bribe a voter.

PENALTIES FOR VIOLATING THESE LAWS.

- 2824. Officer failing to do his duty; a misdemeanor.
- 2825. False count or return; a felony.
- 2826. General provision.

COUNTING THE BALLOTS—RETURNS, ETC.

- 2827. Signing of poll books.
- 2828. Ballots folded together fraudulent.
- 2829. Ballots with surplus of names fraudulent.
- 2830. Ballots not fraudulent.
- 2831. Provides how count shall be made.
- 2832, 2833. Provides how returns shall be made and forwarded.
- 2834. Penalty for failure to perform service.
- 2835. Commissioners to dispatch messenger, when.

ASCERTAINING AND DECLARING RESULT.

- 2836. County commissioners to canvass the vote and make return to the proper officers and deliver certificates of election. Duty of Secretary of State.
- 2837. How and when a recount may be had.

DISPOSITION OF BALLOTS AND CERTIFICATES.

SECTION.

2838. County commissioners shall keep ballots and certificates for six months, except in certain cases. Penalty for violating this section or disclosing how any one voted.

COMPENSATION OF COUNTY BOARD.

2839. Amount of compensation fixed.

FEES OF JUDGES AND CLERKS.

- 2840, 2841, 2842. Amount; how certified and paid.

EXPENSES OF ELECTION.

2843. To be paid by counties.
2844. By municipal corporations and special school districts.
2845. Sheriff's fees.

ELECTION PRECINCTS, CHANGES, ETC.

2846. County commissioners may change boundaries and make new precincts, but no changes to be made within thirty days of an election. Any changes to be made of record and notice given.

PROCEEDINGS WHEN RETURNS ARE NOT MADE.

2847. When Secretary of State shall dispatch messenger. Penalty for commissioners neglecting to send returns.

CANVASS OF VOTES BY SECRETARY OF STATE.

2848. Vote for members of Congress.
2849. Governor to grant certificate; Governor to order election in case of tie vote.
2850. Secretary of State to canvass vote.
2850a. Governor's duty in case of tie vote.
2851. Secretary of State to furnish the Legislature with list of members.

CANVASS OF VOTES FOR STATE OFFICERS.

2852. Speaker of House of Representatives to canvass votes.

VACANCIES IN OFFICE—ELECTIONS TO FILL.

2853. In office of members of Congress.
2854. In office of Governor; by whom returns canvassed.
2855. Elections; when held; writ to be published.

CONTESTED ELECTIONS.

- 2856, 2857. Contest for certain offices; where had and when commenced.
2858. Complaint to set forth grounds of contest.
2859. Judgment in case of success of contestant.

SECTION.

- 2860. Contest for county offices; where had; notice to be given.
- 2861. Depositions; court to determine contest in a summary way.
- 2862. Governor to commission contestant on order of court.
- 2863. Governor to give notice on revoking commission.
- 2864. Acts, while holding commission, valid.

CONTESTANT TO GIVE BOND FOR COSTS.

- 2865. Bond, condition of.
- 2866. Not to proceed until bond is filed.
- 2867. When judgment for costs to be rendered against contestant.

CONTESTING ELECTION OF SENATORS AND REPRESENTATIVES.

- 2868. Requirements of notice to be given.
- 2869. Time not to exceed thirty days; justices to issue subpoenas.
- 2870. When contestants to close evidence.
- 2871. Cross contest; new points raised; notice, etc.
- 2872. Evidence to close ten days before meeting of Legislature.
- 2873. Rebutting testimony.
- 2874. Attendance of witnesses.
- 2875. Justices to certify testimony.
- 2876. Irrelevant testimony not received.

CONTEST FOR THE OFFICE OF GOVERNOR, SECRETARY OF STATE, ETC.

- 2877. General assembly to decide.
- 2878. Petition to contest election of Governor.
- 2879. Committee to be appointed; when; powers, etc.
- 2880. Reasonable notice to be given by contestee of taking depositions.
- 2881. Contestee allowed to attend examination of witnesses.
- 2882. Committee to report facts; joint session to decide on same.

PRESIDENTIAL ELECTORS.

- 2883. Election of; when held.
- 2884. How election conducted.
- 2885. Governor to furnish list of electors; mileage allowed.
- 2886. Meeting and casting vote of.
- 2887. Per diem and mileage of electors.
- 2888. Vacancy in electors; how filled.
- 2889. What officers not eligible.
- 2890. Contest of election of electors; how decided.
- 2891. This Act to govern election of all officers not otherwise provided for.

PRIMARY ELECTIONS.

SECTION.

- 2892. How made legal.
- 2893. Qualifications of judges and clerks of.
- 2894. Judges shall be sworn and may administer oaths to clerks and electors.
- 2895. Making false count or return misdemeanor. Penalty.
- 2896. Illegal voting, selling votes, bribery or intimidation of voters, misdemeanor. Penalty.
- 2897. Unlawful to sell or give away intoxicating liquor day of or succeeding night. Penalty.

ELECTION, APPOINTMENT AND QUALIFICATIONS OF OFFICERS.

- 5433. Elections, regular and special, how and when held.
- 5434. Returns, how made.
- 5435. Oath of office. Bonds for discharge of duties.

GENERAL ELECTION—TIME OF HOLDING.

SECTION 2762. On the first Monday in September, eighteen hundred and seventy-six, and every two years thereafter, there shall be held an election in each precinct and ward in this State for the election of all elective State, county and township officers whose term of office is fixed by the Constitution at two years; and State senators in their respective districts when the terms for which senators may have been elected shall expire before the next general election; and for judges of the supreme and circuit courts when the term of office of any judge shall expire before the next general election; and for representatives to the Congress of the United States for each congressional district (b); and for prosecuting attorneys. *Act January 23, 1875, section 1; amended by Act 70, 1907.*

(b) This provision for congressional election to be held in September is not repealed, but is in abeyance by virtue of *Sec. 25, Rev. Stat. of U. S.*, prescribing the next Tuesday after the first Monday in November, 1876, and every second year thereafter, the representatives in Congress shall be elected. In case of repeal of section 25 by congress this section would become operative.

By Sec. 26, Rev. Stat. of the U. S., special elections for representatives in Congress to fill vacancies are held at such times as may be fixed by the laws of the State.

STATE AND COUNTY BOARDS OF ELECTION COMMISSIONERS.

SEC. 2763. The Governor, Secretary of State and Attorney-General (c) shall constitute a State Board of Election Commissioners, whose duty it shall be, not more than ninety days nor less than thirty days before any general election for State and county officers, to appoint three qualified electors as commissioners in each county to select election judges for each voting precinct, and to perform the other duties herein prescribed. No person who is a candidate for any office to be voted for at such election, or is a deputy, or clerk or employee of any office or person who is a candidate for election, shall act as county commissioner. The appointment of the county commissioners shall be in writing, under the hands of the State board, and the said State board shall immediately mail to each county commissioner, at the county seat, a notice of his appointment, and, in addition thereto, shall mail to the clerk of the circuit court in such county a certificate of the appointment of such commissioners, and, upon the receipt of such certificate, it shall be the duty of such circuit clerk to cause to be served upon each of said commissioners, by the sheriff, a notice requiring said commissioners to appear before said clerk on or before the day fixed for entering upon their duties, and take and subscribe the oath prescribed by section twenty, of article nineteen, of the Constitution, which said oath shall be indorsed on the certificate, and, when so indorsed, said certificate shall be filed in said office as a record.

SEC. 2764. The said commissioners shall hold office until their successors are appointed and qualified. Said commissioners shall meet at the courthouse at least twenty days prior to the general election, and shall organize themselves into a board of election commissioners by electing one member chairman and

(c) The original act is here changed in conformity to act April 10, 1893.

another clerk. Each commissioner shall have one vote, and two shall constitute a quorum, and the concurring votes of any two shall decide all questions before them (d).

SEC. 2765. They shall, after their organization as aforesaid, not less than five days before any general election, appoint three judges of election for each voting precinct in the county, which appointments shall be served on or delivered to the persons appointed by the sheriff of the county, and the clerk of the board shall make a record of such appointment and shall file the same, attested by the chairman and the clerk of the board, with the county clerk. If any judge so appointed shall die or resign before the election, said board shall fill the vacancy. All of said county commissioners shall not be members of the same political party. *Act May 23, 1901.*

SEC. 2766. Any vacancy in the county board of commissioners shall be filled by appointment by the State board of commissioners, in the same manner as the county commissioners are originally appointed; and if it shall occur that all, or a majority, of the county commissioners shall resign, refuse to act, die, or their places become vacant from any cause, so that there shall not be a quorum in office at the time that said board is required to do and perform any of the acts or things by this act required of them, then and in that event, the county judge, sheriff and county clerk shall, in the order herein named, fill said vacancies for the time, and shall perform the duties of election commissioners until the vacancies in said board can be filled as herein provided for. *Act March 4, 1891, section 1.*

QUALIFICATION OF ELECTORS.

SEC. 2767. Every male citizen of the United States, or male person who has declared his intention

(d) They may call on the Attorney-General for an official opinion in regard to the election laws. See sec. 3460.

of becoming a citizen of the same, of the age of twenty-one years, who has resided in the State twelve months, in the county six months and in the precinct or ward one month, next preceding any election at which he may propose to vote, except such person as may, for the commission of some felony, be deprived of the right to vote by law, passed by the General Assembly, and who shall exhibit a poll tax receipt or other evidence that he has paid his poll tax at the time of collecting taxes next preceding such election, shall be allowed to vote at any election in the State of Arkansas (e). Provided, that persons who make satisfactory proof that they have attained the age of twenty-one years since the time of assessing taxes next preceding said election and possess the other necessary qualifications, shall be permitted to vote; and provided further, that the said tax receipt shall be so marked by dated stamp or written indorsement by the judges of election to whom it may be first presented as to prevent the holder thereof from voting more than once at any election. *Constitution of Arkansas, amendment number 2.*

SEC. 2768. No idiot or insane person shall be entitled to the privileges of an elector, nor shall any soldier or marine in the military or naval service of the United States acquire a residence that shall entitle him to vote by reason of being stationed on duty in this State. No one who has been convicted of any offense which is a felony at the common law, or by statute (f), shall be allowed to vote at any election in this State, unless such person shall have been pardoned by the Governor, and the records of the court wherein such person shall have been convicted shall be conclusive evidence of his conviction. Whenever any person shall present himself to vote, and there shall be no specific evidence prescribed by law as being necessary to es-

(e) *Whittaker v. Watson*, 68—555.

(f) See *Rison v. Farr*, 24—161; *art. III, sec. 2, Const. and Am. No. 2.*

tablish his qualifications, the judges of election may interrogate him under oath, touching his qualifications as an elector, or they may satisfy themselves in relation thereto by any legal testimony. *Act March 4, 1891, section 18.*

POLL TAX RECEIPTS (g).

SEC. 2769. At any time after the assessment lists have been delivered to the county clerk for the purpose of enabling him to prepare the tax books for the collector, any person whose name has for any cause been omitted from the said lists may have his name included in said list and placed upon the tax lists in the hands of the collector by application to the said clerk at any time before the Saturday next preceding the first Monday of July, when the collector is required to make his final settlement with the county court. If the said application shall be made after the tax books have been delivered to the collector, the clerk shall certify the said supplemental assessment, which he is hereby authorized to make, to the collector, and shall charge to said collector the amount of tax and penalties so added. In addition to the sum assessed against any such applicant for poll tax, the clerk shall extend against him a penalty for failing to return his assessment to the assessor at the proper time, one dollar, twenty-five cents of which shall go to the clerk for his services, and seventy-five cents shall go into the fund for general county expenses; and if said application shall be made after the 10th of April the collector shall collect a penalty of twenty-five cents for a failure to pay the said poll tax at the time prescribed for making payment of taxes without penalty. In addition to the assessment of poll tax in such cases, it is hereby made the duty of said clerk to assess any property held by said applicant, and which, for any reason, has been omitted from the tax books.

(g) As to effect of payment of one's poll tax as a gift by another see *Rhodes v. Driver*, 69—501; *Freeman v. Lazarus*, 61—247; *Whittaker v. Watson*, 68—555.

SEC. 2770. Upon the payment of poll tax assessed against any person liable therefor, and the specific penalties imposed for a failure to cause the same to be assessed or paid at the time allowed for severally doing these acts without penalty, the person making such payment shall be entitled to receive from the collector a separate poll tax receipt, and to have his name included in the collector's official list of persons who have paid poll tax; and it shall be unlawful for any collector to refuse to execute such receipt, or to enter on said list the name of any such person, because of the failure or refusal to pay the taxes due upon any property held by such person. But all other remedies now given by law for a failure to pay such taxes on any such property are hereby preserved.

SEC. 2771. On the first Monday in July of each year the collector shall file with the county clerk a list containing the correct names, alphabetically arranged, of all persons who have, up to and including that date, paid the poll tax assessed against them respectively. The correctness of this list shall be authenticated by the affidavit of the collector in person. The county clerk shall at once record the said list in a well-bound book to be kept for that purpose, and on or before the 15th day of July, shall deliver to the county election commissioners, or to the chairman or secretary of the said board, a certified copy thereof. The original shall be kept on file in the office of the said clerk, free to the inspection of any elector of said county, and the clerk shall, on demand, accompanied by the fee prescribed by law for making a copy of any instrument or record, make a copy thereof for any person. The county election commissioners shall cause to be printed a sufficient number of said lists to supply to each judge of election, at every general or special election, a copy thereof, to be sent to such judge with the ballots and blank poll books now directed to be sent preparatory to holding any election. The said election commissioners are authorized to have said printing done at an

expense not to exceed one dollar and fifty cents for each one hundred names on said list. The fees of the county clerk for all services to be rendered by him in filing, recording and furnishing to the election commissioners a certified copy of said list shall be ten cents for each one hundred words contained in said list, and the certified copy thereof so furnished to said commissioners. *Amended by Act 265, 1905.*

SEC. 2772. The "time for collecting taxes," as this term is employed in the Constitution in connection with the payment of poll taxes, is hereby defined to be the period between the first Monday in January and the Saturday next preceding the first Monday in July, on which last named date the collector is required by law to make his final settlement with the county court. Any person liable to pay poll tax, and who has paid the same at any time within the dates named, shall, if possessed of the other qualifications required by law of an elector, be entitled to vote at any election held in this State at any time before the first Monday in July of the year succeeding that in which the payment is made. The Auditor shall cause to be printed in the blank poll tax receipt which he is required to furnish to the collector, and the county election commissioners are required to have printed in plain type and in a conspicuous place on the lists which they are required to furnish to the election judges, an express statement of the time within which the payment in any particular case will authorize the tax payer, otherwise qualified, to vote. The Auditor shall furnish to each collector in the State as many blank poll tax receipts containing the statement aforesaid as will be necessary to supply to each tax payer a proper receipt. It is hereby made unlawful for the Auditor to fail to furnish to such collector a sufficiency of said blanks, or for any collector to furnish to any tax payer a receipt prepared otherwise than on one of said official blanks. It is made the duty of the collector at the time he makes his final settlement with the State Treasurer to deliver to

the Auditor all unused blanks. If the collector shall fail to file said unused blank receipts, the Auditor shall charge him on his account for the benefit of the general revenue fund with a sum equal to one dollar for each of said blanks not so returned, and the Auditor shall not issue to the said collector a *quietus* until said sum is fully paid, and in addition thereto, the collector shall be liable to the penalties prescribed by this act as for a violation of its provisions.

SEC. 2773. Any person whose name appears on the official list filed by the collector, shall, if otherwise qualified, be permitted to vote without being required to do more than to state, without being sworn, if asked by the election judges, that the receipt is not in his immediate possession, and that he has not previously used the receipt to vote at the particular election, and that he does not purpose doing so. In the event that the elector does not present his poll tax receipt the clerk shall write on the poll book, opposite his name and the number of his ballot, the word "list," which shall be taken to mean that said elector has voted at that precinct without having exhibited his receipt. In any prosecution of an elector for having voted more than once this entry shall be deemed and taken to be *prima facie* evidence that the said elector has voted without exhibiting his poll tax receipt. If the judges of election have any doubt as to the identity of any person being the person whose name appears upon the official list of those who have paid poll tax, they may take evidence by the oath of the person who presents himself claiming to be such person, or by other competent evidence, and in this connection the judges of election are hereby empowered to administer oaths. Any person offering to vote outside the county in which his poll tax has been paid, must present the collector's receipt or a certificate from the county clerk of the county in which the payment was made, to the effect that such person's name appears upon the official list filed by the collector, and by making proof to the sat-

isfaction of the election judges of his identity with the person named in the clerk's certificate or receipt. *Act March 18, 1895.*

SEC. 2774. Any person who makes satisfactory proof that he has attained the age of twenty-one years since the time of assessing taxes next preceding said election and possesses the necessary qualifications shall be entitled to vote.

SEC. 2775. The said poll tax receipt of electors presented to the judges of said election shall be so marked by dated stamp or written indorsement by the judges of the election to whom it may be first presented as to prevent the holder thereof from voting more than once at any election. *Act April 10, 1893.*

SEC. 2776. Any clerk, collector, election commissioner, or other person who shall wilfully violate any of the provisions of this act shall, upon conviction, be punished by a fine not less than three hundred dollars nor more than one thousand dollars, or by imprisonment for a period not less than one month nor more than six months, or by both such fine and imprisonment at the discretion of the court. *Act March 18, 1895.*

NOMINATION OF CANDIDATES AND CERTIFICATION THEREOF.

SEC. 2777. The nomination of candidates shall be certified in the following manner: By the chairman and secretary of any convention of delegates, or of the canvassing board of any primary election, held by authority of any organized political party in the State, or subdivision thereof, in which such convention or primary election is held; and also, by electors of the State, district, county, township, ward of a city or incorporated town, for which the nomination is made; provided, the number of signatures of electors so required shall not be less than fifty, nor more than one thousand, for the State or any district or county, and not less than ten, nor more than fifty, for any township

or ward of a city or incorporated town. All certificates of nomination made by the chairman and secretaries of conventions, or of canvassing boards of primary elections, shall be duly acknowledged before an officer authorized by law to take acknowledgments. The said certificate of nomination shall be accompanied by the receipt of the treasurer or collector of each county in which any candidate is to be voted for, for the following amounts, namely: Candidates for offices to be voted for by the electors of the entire State, fifty cents each; candidates for offices to be voted for by the electors of a district composed of more than one county, except members of Congress, three dollars; candidates for representatives in Congress, ten dollars; candidates for offices to be voted for by the electors of a single county, three dollars; candidates for offices to be voted for by the electors of a township, one dollar. These several amounts shall be placed to the credit of the fund for general county expenses. Candidates for offices to be voted for by the electors of any incorporated town or city shall present the receipt of the treasurer or collector of such municipality for the sum of one dollar each. All money received from this source shall be placed to the credit of the fund for general expenses of said city or town. *Act March 4, 1891, section 22.*

SEC. 2778. The nomination fee required by law to be paid as a condition for having the name of any candidate printed on an official ballot, may, in the case of a State or district office, be paid into the State treasury, and the receipt of this officer for such payment shall authorize the Secretary of State to include in his certificate to the county election commissioners of the respective counties the name of any person making such payment, and who has otherwise complied with the law relating to nominations. The sum so paid shall be credited to the several counties of the State or district as the particular case may be. The Auditor shall charge the Treasurer with the several amounts thus

paid, and shall notify the several county clerks thereof. It is also hereby made the duty of the Secretary of State, immediately after the passage of this act, to certify to the several county clerks a statement of the amounts for which collectors' and county treasurers' receipts have been filed in his office on account of nomination fees at former elections, and upon receipt of such certificate it shall be the duty of the said clerks to charge these amounts to the collector or treasurer who executed such receipt in any given case, if upon examination it shall appear that this has not been done already. *Act March 18, 1895.*

SEC. 2779. All certificates of the nomination of candidates for Presidential Electors and members of Congress, and for State and judicial and district offices, either by convention, primary elections or electors, shall be filed with the Secretary of State; and all certificates of the nomination of candidates for county, township and municipal offices shall be filed with the county election commissioners of the county in which they are to be voted for.

SEC. 2780. Certificates of nomination required by this act to be filed with the Secretary of State shall be filed not more than sixty days and not less than twenty days before the day fixed by law for the election of persons in nomination. Certificates of nominations herein directed to be filed with the county election commissioners shall be filed not more than sixty days and not less than fifteen days before the election. Provided, in case of any vacancy occurring in any nomination by declination, withdrawal, death or otherwise, the central committee, or a convention or primary election called for that purpose, of the party on whose ticket such vacancy may be, may select and certify to the Secretary of State, or proper county election commissioners, the name of the candidate to fill such vacancy.

SEC. 2781. Whenever it shall appear by affidavit that an error or omission has occurred in the publica-

tion of the names or description of candidates nominated for office, or in the printing of ballots, the circuit court of any county, or the judge thereof in vacation, or, if the circuit judge be then absent from the county, the judge of the county court shall, upon the application of any elector, by order, require the county election commissioners to immediately correct such error or omission, or show cause why the same should not be done.

SEC. 2782. Not less than eighteen days before each election the Secretary of State shall certify to all the county election commissioners full lists of all candidates to be voted for in their counties, respectively, as the nominations have been certified to him.

SEC. 2783. Every person who shall falsely make or fraudulently destroy any certificate of nominations, or any part thereof, or file any certificate of nominations knowing the same, or any part thereof, to be false, or suppress any nomination which has been duly filed, or any part thereof, or forge or falsely write the name or initials of any judge of election on any ballot, shall be deemed guilty of a felony, and on conviction thereof punished by confinement at hard labor in the penitentiary not less than one nor more than five years. *Act March 4, 1891, sections 22, 25, 37 and 40.*

DECLINATIONS OF NOMINATIONS.

SEC. 2784. The Secretary of State shall not certify the name of any candidate whose certificate of nomination shall have been filed in his office, who shall have notified him in writing, acknowledged before an officer authorized by law to take acknowledgments, that he will not accept the nomination specified in the certificate of nomination. And the county election commissioners shall not include in the posting to be made by them as hereafter provided the name of any candidate whose certificate of nomination shall have been filed with them, who shall have notified them in

like manner that he will not accept the nomination, nor shall the names of such persons be printed on the ballots provided by the commissioners. *Ib.*, section 26.

SUBMISSION OF AMENDMENTS AND OTHER QUESTIONS.

SEC. 2785. Whenever a proposed amendment to the Constitution, or other question, is to be submitted to a vote of the people, the Secretary of State shall, not less than eighteen days before the election, duly certify the same to the commissioners of each county in the State, and the commissioners shall include the same in the posting which they are by this act required to make, and also to print the same on the ballots.

PUBLICATION OF NOMINATIONS AND QUESTIONS SUBMITTED.

SEC. 2786. The commissioners of each county shall make publication of all nominations filed with them, and all nominations certified to them, by the Secretary of State, and also all proposed amendments to the Constitution, and other questions certified to them by the Secretary of State, or required by law to be submitted to the electors at any election, by posting a list thereof at the door of the courthouse at least ten days before the day of election. *Ib.*, sections 27, 28.

THE BALLOTS.

SEC. 2787. At least three days before each election, the county election commissioners shall deliver to the sheriff one hundred and fifty ballots for each fifty, or fraction of fifty, electors in each township or ward of a city or incorporated town in the county, and the said sheriff is required to deliver such ballots to the judges of election at the same time and in the same manner that he is required by section 2794 to deliver the poll books and ballot boxes. Provided, when the sheriff is a candidate at any election the said ballots shall be delivered to the persons, or one thereof,

appointed in his stead as provided in section 2813. *Act March 4, 1891, section 29; amended March 26, 1891.*

SEC. 2788. All election ballots used in any presidential, congressional, State, district, county, township or municipal election in this State, either general or special, shall be provided at county expense by the county election commissioners of the counties in which they are used, respectively; except the ballots used exclusively in municipal elections, which shall be provided by the commissioners at the expense of the cities and incorporated towns in which they are used, respectively.

SEC. 2789. The county election commissioners of each county in this State shall, in due time for each general or special election, provide for each election precinct, and for each ward of a city or incorporated town in their county, one hundred and fifty printed ballots for each fifty, or fraction of fifty, electors voting thereat at the last preceding election; and no ballot shall be received or counted in any election to which this act applies, except it be provided by the county election commissioners as herein prescribed. All ballots cast and not included in the count made by the election judges for want of conformity to the provisions of this act shall be preserved and sealed in a separate package, and be returned to the county election commissioners.

SEC. 2790. All election ballots provided by the county election commissioners of any county in this State for any election shall be alike, and shall be printed in plain type; and shall contain in the proper place the name of every candidate whose nomination for any office to be filled at that election has been certified to the said commissioners, as provided for in this act, and shall not contain the name of any candidate or person which has not been so certified. Below the names of the candidates for each office nominated by the organized parties, as well as those nominated by

electors, shall be left a blank space large enough to contain as many names in writing as there are offices to be filled. *Act March 4, 1891, sections 19-21.*

SEC. 2791. It is the duty of the election commissioners in the several counties of the State of Arkansas to place on the ticket to be voted at the election held for the election of county officers, "For road tax" and "Against road tax," and said commissioners shall canvass said vote and declare the same as they do other returns. *Act May 23, 1901.*

FORM OF THE BALLOT.

SEC. 2792. The county election commissioners shall prepare the ballots provided for under this act in accordance with the following form, except the order in which the several offices to be filled are stated, namely:

OFFICIAL BALLOT, Election.....19.....

Cross out or scratch off the names of all persons except those for whom you wish to vote.

GOVERNOR. *Vote for one.*

John Smith, Dem.

William Jones, Rep.

Henry Fisher, Ind.

SECRETARY OF STATE. *Vote for one.*

Thomas Moore, Rep.

William King, Ind.

James Sinclair, Dem.

AUDITOR OF STATE. *Vote for one.*

William Miller, Dem.

John Pope, Rep.

Thomas Andrews, Ind.

FOR SHERIFF. *Vote for one.*

Thomas Jones, Dem.

James White, Ind.

George Smith, Rep.

FOR REPRESENTATIVE. *Vote for two.*

John Doe, Dem.

Richard Roe, Dem.

Hiram Smith, Ind.

Henry Jones, Ind.

William Carter, Rep.

Nathan Hardy, Rep.

—*Act March 4, 1891; amended March 26, 1891.*

BALLOT BOXES, POLL BOOKS AND SUPPLIES.

SEC. 2793. It shall be the duty of the county election commissioners to provide for each election precinct a good and sufficient ballot box, with lock and key, two blank poll books containing proper captions and supplied with sufficient pages to record the names of all voters in the precinct, tally sheets and envelopes in which to seal up the ballots and certificates. They shall also provide on sheets separate from the poll books blank forms of certificates prepared in such a manner as will enable the judges of election to properly certify the result of the election, upon which certificates shall be indorsed a blank form of oath to be taken by the judges and clerks before entering upon the discharge of their duties.

SEC. 2794. Such ballot box, poll books and blank certificates, tally sheets and envelopes shall be delivered by said commissioners to the sheriff, or in the event of his being a candidate at such election, then the same shall be delivered to the person appointed to perform the duties of said sheriff as provided for in section 2813. It shall be the duty of said sheriff, or person

appointed in his stead as in this act provided, to deliver the same to the judges of election when they have assembled at the voting place for the purpose of holding the election. The said ballot box, poll books, tally sheets, envelopes and certificates shall be paid by the several counties of the State. *Act March 4, 1891, section 9.*

POLLING PLACES, HOW ARRANGED, ETC.

SEC. 2795. All officers upon whom the law imposes the duty of designating polling places shall provide in each room designated by them as a polling place one booth or compartment for each one hundred electors, or fraction of one hundred, voting thereat at the last preceding election, and furnish the same with a table, shelf or desk for the convenience of electors in preparing their ballots. Said booths shall be at least five feet apart, and the walls thereof shall be of wood and so constructed as to enable each elector to enter therein and prepare his ballot free from the interference of any person whomsoever. And no person shall be permitted, under any pretext whatever, to come nearer than fifty feet of any door or window of any polling room, from the opening of the polls until the completion of the count of the ballots and certification of the returns, except as herein provided. *Ib., section 30.*

SEC. 2796 The election commissioners of each county shall cause to be printed in large type on cards instructions for the guidance of electors preparing their ballots. They shall furnish twelve such cards to the judges of election in each election district, at the same time and in the same manner as the printed ballots. The judges of election shall post not less than one of such cards in each place or compartment provided for the preparation of ballots, and not less than three of such cards elsewhere in and about the polling place upon the day of election. Said cards shall be printed in large, clear type, and shall contain full instructions to

the voters as to what should be done: First—To obtain ballots for voting. Second—To prepare the ballots for deposit in the ballot boxes. Third—To obtain a new ballot in place of one accidentally spoiled; also a copy of sections 2817, 2818, 2819, 2820 and 2821. *Ib.*, section 46.

SEC. 2797. The judges of elections shall cause copies of all constitutional amendments submitted to the people for adoption to be posted in each voting booth and they shall cause three copies to be posted in conspicuous places near the polling place. The county canvassing board shall furnish the copies to the sheriff, who shall deliver the same to the judges of election at each polling place at the same time he delivers the poll books. *Act May 23, 1901.*

SEC. 2798. No person shall, during the election, remove, tear down, or destroy any booths or supplies, or other conveniences placed in any booth or polling place as aforesaid for the purpose of enabling the voter to prepare his ballot.

No person shall, during an election, remove, tear down or deface the cards printed for the instruction of voters. Every person wilfully violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than one hundred dollars, nor more than two hundred and fifty dollars, or imprisonment in the county jail not less than one month, or both such fine and imprisonment, at the discretion of the jury trying the case. *Act March 4, 1891, section 47.*

JUDGES OF ELECTION (h).

SEC. 2799. The judges of election shall be discreet persons, able to read and write the English

(h) See *art. III, sec. 10, Const.*

Disqualification of the officers of an election at a particular polling place will not annul the poll. They are officers *de facto*—their acts as valid as to the public as if officers *de jure*; and their title can not be questioned, collaterally, as in a contested election case. *Swepton v. Barton*, 39—549.

language, and qualified electors in the precincts for which they are appointed to act; and they shall not all be selected from the same political party, if competent persons of different politics can be found.

SEC. 2800. The judges of election appointed under this act shall continue to be judges of election within their respective precincts until the next general election, unless sooner removed by the county election commissioners (i). *Act March 4, 1891, sections 2, 3.*

SEC. 2801. No person shall be competent to act as judge or clerk of any election authorized to be holden by the laws and Constitution of this State who shall have any moneys, goods, wares or merchandise bet on the result of any such election.

SEC. 2802. Any person who shall act in any election as aforesaid, having any moneys, goods, wares or merchandise bet on the result of any such election, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, to be fixed by the judge or jury trying the case. *Act January 23, 1875, sections 6, 7.*

SEC. 2803. If any election judge shall be absent at the time fixed for the opening of the polls, the other judge or judges shall appoint some person or persons having the qualifications prescribed by this act for election judges to supply such vacancy; and if all the judges shall be absent, then the voters present shall elect as judges persons having the required qualifications.

SEC. 2804. The judges of election shall appoint two clerks at each precinct. *Act March 4, 1891, section 4.*

That an officer of an election was himself a candidate voted for, while it might avoid the election as to him, would not affect the other candidates. *Ib.*

Misconduct of. *Rhodes v. Driver*, 69—501; *Freeman v. Lazarus*, 61—247.

(i) See sec. 2601.

OATHS OF JUDGES AND CLERKS.

SEC. 2805. The judges, before entering on their duties, shall take, before some person authorized by law to administer oaths, the following oath: "I, _____, do swear that I will perform the duties of judge of this election according to law and to the best of my abilities, and that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same, and that I will not disclose how any elector shall have voted, unless required to do so as a witness in a judicial proceeding or a proceeding to contest an election" (j).

SEC. 2806. The clerks of elections, before entering on their duties, shall take an oath that they will faithfully record the names of all voters, and that they will not disclose how any elector shall have voted, unless required to do so as a witness in a judicial proceeding or a proceeding to contest an election.

SEC. 2807. In case there shall be no person present at the opening of any election authorized to administer oaths, it shall be lawful for the judges of the election to administer the oaths to each other and to the clerks; and such judges shall have full power and authority to administer all oaths that may be necessary in conducting any election.

SEC. 2808. The person who shall administer the oaths to the judges and clerks of any election shall cause a certificate to be prefixed to the poll books in words to the following effect: "I do certify that _____ and _____, judges and _____ and _____, clerks, of the election held in the township of _____, in the county of _____, on the _____ day of _____, in the year one thousand eight hundred and _____, were severally sworn as the law directs previous to entering on their respective duties;" which certificate shall be subscribed by the person administering the oaths, and shall be considered as a part of the record of the election. *Act January 23, 1877, sections 10-13.*

(j) See *art III, sec. 3, Const.*

SHERIFF TO MAKE PROCLAMATION.

SEC. 2809. It shall be the duty of the sheriff of each county, at least twenty days before each general election and ten days before the holding of each special election, to give public notice, by proclamation throughout the county, of the time and several places of holding such elections in his county and the officers to be elected at such time.

SEC. 2810. A copy of such proclamation shall be set up at each of the places fixed for holding such election and two or more of the most public places in each township, and published in a newspaper, if one be published in the county. *Ib.*, sections 8, 9.

MANNER OF VOTING AND CONDUCTING ELECTION.

SEC. 2811. All elections by the people shall be by ballot. Every ballot shall be numbered in the order in which it shall be received, and the number recorded by the election officers on the list of voters, opposite the name of the elector who presents the ballot (k). *Act January 23, 1875, section 23.*

SEC. 2812. The polls shall be opened at eight o'clock a. m., and shall remain continuously opened until half past six o'clock p. m. *Act March 4, 1891, section 5.*

SEC. 2813. The sheriff of the county shall police the election precincts and preserve order. He shall appoint, not exceeding three, deputies at each precinct, and shall allow no crowd to collect at the polling place nearer than herein provided for, and no deputy herein provided for, while engaged in the duties herein prescribed, shall in any manner influence, or endeavor to influence, any person in casting his vote; provided, when the sheriff, for the time being, shall be a candidate at any election, it shall be the duty of the county elec-

(k) See art. III, sec. 3, Const.

tion commissioners to appoint some suitable person or persons at each precinct to perform the duties of the sheriff as hereinbefore prescribed, and the said sheriff and his deputies are hereby disqualified to discharge said duty in such cases. *Ib.*, section 8.

SEC. 2814. Except as the electors are admitted and pass in, one at a time, to vote, no person shall, under any pretext whatever, be permitted in the polling room, from the opening of the polls until the completion of the count of the ballots and certification of the returns, except the sheriff or deputy, and the judges and clerks of the election. Provided, the attendance of the sheriff at the polling place shall only be allowed upon the request of the judges of the election. Provided, further, if any person who demands admittance to the polling place for the purpose of voting, whose right to vote is questioned by any elector, the said challenge shall be communicated to the judges before such person is permitted to vote by the sheriff or some other officer or person in attendance and in charge of admission to the polling place, and when this is the case the witnesses necessary to determine the matter of the voter's qualifications shall be admitted. No elector shall be allowed to occupy a booth or compartment for the purpose of voting for a longer time than five minutes. If the voter shall not have completed the preparation of the ballot within the time allowed, he may call upon the judges to assist in its preparation, or he can withdraw, after having returned to the judges the ballot delivered to him. After having voted, or declined to do so, the voter shall immediately depart from the polling place, and go beyond the prohibited distance therefrom. *Ib.*, section 31.

SEC. 2815. The judge to whom any ballot shall be delivered shall, upon receipt thereof, pronounce in an audible voice the name of the elector from whom he receives the ballot, and if no objection is made to him, and the judges be satisfied that he is legally entitled, agreeably to the Constitution and laws of the State,

to vote at the election, he shall immediately number the ballot, as provided in section 2811, and put the same in the ballot box, without opening or in any way inspecting the names written or printed thereon (l).

SEC. 2816. It shall be the duty of the clerks of election to register the names of each and all electors in the order in which they may present their ballots, placing opposite each name its appropriate number, as required by section 2811. *Act January 23, 1875, sections 31, 32.*

SEC. 2817. Each elector upon entering the polling room shall be given one ballot by the judges. Before delivering a ballot to an elector at least one of the judges shall write his name or initials on the back thereof (m). On receiving his ballot the elector shall forthwith, and without leaving the polling room, retire alone to one of the booths provided for that purpose, and there prepare his ballot. He shall scratch off, erase or cross out the names of all candidates except those for whom he wishes to vote, and write the name of any person for whom he may wish to vote whose name is not printed where he would have it, or not printed on the ballot at all. In the case of a constitutional amendment or other question, as, for instance, "For license," or "Against license," which the county election commissioners shall cause to be printed on the ballots whenever the question of liquor license is to be voted on, the elector shall cross out parts of his ballot in such manner that the remaining part shall be as he wishes to vote. After thus preparing his ballot the elector shall fold the same so as to conceal the face thereof, and show the name or initials of the judge on the back, and hand it to the receiving judge, who shall call out the name of the elector, the number of the ballot, and write the

(l) See *art. III, sec. 11, Const.*

(m) Judge must indorse his own name or initials on ballot, otherwise ballot should be thrown out. *Rhodes v. Driver*, 67—501.

Illegal indorsement destroys integrity of returns and calls for proof of how electors voted. *Ib.*

number on the ballot and then deposit it in the ballot box in the sight of the elector, who shall then immediately leave the room and go beyond the prohibited distance.

SEC. 2818. Any voter who shall, by accident or mistake, spoil any ballot, so that he can not conveniently or safely vote the same, may return it to the judges and receive another in the place thereof. In no case shall any person be permitted to carry a ballot outside of the polling room.

SEC. 2819. Any elector who shall tell the judges that he can not read or write, or that by reason of any physical disability he is unable to mark his ballot, may have the assistance of two of the judges in the preparation of his ballot, who, in the presence of the elector and in the presence of each other, shall prepare his ballot for him as he wishes to vote it. But before any such elector shall be required or permitted to tell how he wishes his ballot made up, or for whom he wishes to vote, all electors, including those in the booths, shall be required to withdraw from the polling room (n).

SEC. 2820. No ballot shall be received from an elector or deposited in the ballot box which does not have the name or initials of at least one of the judges indorsed on the back of it (o).

SEC. 2821. Any person taking or carrying any ballot obtained from any judge outside of the polling room, or having in his possession outside of the polling room before the closing of the polls, any ballot provided by any county election commissioners, as prescribed in this act, or any paper purporting to be such a ballot, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than

(n) Voter allowed to contradict his ballot in an election contest where it is shown ballot was prepared for him by one instead of two judges. *Freeman v. Lazarus*, 61—247. Fraud of judges held to invalidate election. *Ib.*

(o) *Rhodes v. Driver*, 67—501.

twenty-five dollars nor more than one hundred dollars, and imprisoned in the county jail not less than one month nor more than six months. *Act March 4, 1891, sections 32-36.*

SEC. 2822. In precincts in which more than one hundred votes were cast at the election next preceding the one then being held, where the electors consist of persons belonging to the different races, the judges of election and the sheriff in attendance shall, when there are persons of both races present and ready to vote, so conduct admittance to the voting place as to permit persons of the white and colored races to cast their votes alternately. *Ib., section 7.*

SEC. 2823. No officer of election shall do any electioneering on election day. No person whomsoever shall do any electioneering in any polling room, or within one hundred feet of any polling room on election day. No person shall at or before any election, directly or indirectly, hire or bribe any elector to vote for or against the nominee of any political party, or for or against any particular question or candidate. No person shall coerce, intimidate or unduly influence any elector to vote for or against the nominee of any political party, or for or against any particular question or candidate, by any threat or warning of personal violence or injury, or by any threat or warning of ejectment from rented or leased premises, or by the foreclosure of any mortgage or deed of trust, or of any action at law or equity, or of discharge from employment, or of expulsion from membership in any church, lodge, secret order or benevolent society, or by any oath, or affirmation or secret or written pledge. Nor shall any elector take or receive any money or other valuable thing, or the promise of any money or other valuable thing, in consideration that he shall or will vote for or against any candidate for office, or for or against any candidate or question, or shall promise to vote for or against any such candidate or question. Any violation of this section shall be deemed a felony,

and, on conviction, shall be punished by imprisonment in the penitentiary not less than one year nor more than three years (*). *Ib.*, section 39.

PENALTIES FOR VIOLATING THESE LAWS (p).

SEC. 2824. Every public officer, upon whom any duty is imposed by this act, who shall wilfully neglect or omit to perform such duty, or who shall do anything which is by this act forbidden, other than the things specifically enumerated in sections 2783 and 2825, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by removal from office and imprisonment in the county jail not less than six months nor more than twelve months, or by fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment. *Ib.*, section 38.

SEC. 2825. Any election officer or other person whomsoever who shall wilfully make a false count of any election ballots, or falsely or fraudulently certify the returns of any election, or steal, destroy, secrete or otherwise make way with any election ballot, tally sheet, certificate or ballot box, either before or after the closing of the polls, shall be deemed guilty of a felony, and on conviction thereof, punished by imprisonment at hard labor in the penitentiary not less than two years nor more than seven years.

SEC. 2826. Any violation of this act by any election officer, or other person whomsoever, except a State or county officer, for which no punishment is elsewhere specifically prescribed in this act, shall be deemed a misdemeanor and punishable as in this act provided for misdemeanors. *Ib.*, sections 43, 44.

(*) See note to 2819.

(p) See, also, secs. 2776, 2783, 2798, 2802, 2821, 2853, 2834, 2838, and 1665-1670, inclusive.

It is a misdemeanor at common law to destroy ballots cast at an election. *Mason v. State*, 55—529.

COUNTING THE BALLOTS—RETURNS, ETC. (q).

SEC. 2827. At the closing of the polls, the poll books shall be signed by the judges and attested by the clerks (r), and the names therein shall be counted and the number set down at the foot of the poll books. After the poll books are signed, the ballot box shall be opened, and the ballots therein contained shall be taken out one by one, at a time; by one of the judges, who shall read distinctly, while the ballot remains in his hands, the name or names contained therein, and then deliver it to the second judge, who shall examine the same to see that there is no mistake, and pass it to the third judge, who shall examine and carefully preserve the same. The same method shall be observed in respect to each of the ballots in the ballot box, until the number of ballots taken out of the ballot box is equal to the names in the poll books.

SEC. 2828. When two or more ballots are found folded together, it shall be considered as conclusive evidence of their being fraudulent, and neither of them shall be counted.

SEC. 2829. If a ballot shall be found to contain a greater number of names for any one office than the number of persons required to fill said office, it shall be considered fraudulent as to the whole of the names designated to fill said office, but no further.

SEC. 2830. A ballot shall not be considered fraudulent for containing a less number of names than are authorized to be inserted. *Act January 23, 1875, sections 33, 36-38.*

SEC. 2831. If for any reason the judges shall deem it proper to do so, they may adjourn the count for any reasonable period, not beyond the day succeeding that on which the election is held. Pending

(q) Evidence held sufficient to show invalidity of returns. *Rhodes v. Driver*, 69—501. As to fraudulent and irregular votes. *Ib.*

(r) *Patton v. Coates*, 41—111.

the making of the count, any judge shall have the right to remain with the ballot box, but during the time for which the count is adjourned, a safe place of deposit may be agreed upon by all of the judges.

SEC. 2832. After the examination of the ballots shall be completed, the number of votes cast for each person shall be enumerated under the inspection of the judges, who shall prepare and sign in duplicate a certificate showing the number of votes given for each person, and the office for which such votes were given, which certificates shall be attested by the clerks. And after making such certificate, the judges, before they disperse, shall put under cover one of said tally sheets, certificates and poll books and seal the same, and direct it to the board of county election commissioners.

SEC. 2833. The said certificate and the ballots, sealed in separate packages, shall be conveyed by one of the judges, to be determined by lot, if they can not otherwise agree, to the county election commissioners, within three days after the close of the polls; and the other certificate, tally sheets and poll books shall be retained by the judges, free for the inspection of all persons. It shall be the duty of the judges of election of the several precincts, after the ballots shall have been inspected and counted, to securely envelope all such ballots and send the same, together with the certificate, tally sheets and poll book as aforesaid to the county election commissioners, to be kept as hereinafter provided (s).

SEC. 2834. If any judge of election, on whom the lot may fall to carry such ballots, certificates, tally sheets and poll books to the election commissioners, shall neglect or refuse to perform the service according to the provisions of this act, he shall forfeit the sum of

(s) *Patton v. Coates*, 41—111; *Dixon v. Orr*, 49—238; *Powell v. Holman*, 50—85; *Merritt v. Hinton*, 55—12.

two hundred dollars to be recovered by indictment, or by action of debt, in the name of the State for the use of the county.

SEC. 2835. If any judge of election in any precinct, whose duty it may be, should fail to deliver to the county election commissioners the certificate, tally sheets, poll book and ballots within three days, on the fourth day the said commissioners shall dispatch a messenger to bring up the same, or the duplicate certificate, tally sheets, poll book and ballots, in which case the return shall not be compared until the seventh day, and all expense incurred by sending the messenger shall be paid by the defaulting judge of election.

ASCERTAINING AND DECLARING THE RESULT (t).

SEC. 2836. As soon as the returns from all the precincts are received, but in no event later than seventh day after the election, the county election commissioners shall from the certificates and ballots received from the several precincts, proceed to ascertain and declare the result of said election, and shall within fifteen days after the day of said election deliver a certificate of his election to any person having the highest number of legal votes for member of the House of Representatives, or any county or township officer; and the said commissioners shall also file in the office of the clerk of the county court a certificate setting forth in details the result of said election. The commissioners of election shall, within two days after the comparison and examination of the returns of any election, deposit in the nearest postoffice, on the most direct route to the seat of government, certified copies of the abstracts of the returns of the election for members of Congress and all executive, legislative and judicial officers, directed to the Secretary of State, and they shall at the same time inclose in a separate envelope and direct to the Speaker of the House of Representatives, in care of

(t) See *Howard v. McDiarmid*, 26—100; *Patton v. Coates*, 41—111; *Willeford v. State*, 43—63; *Merritt v. Hinton*, 55—12.

the Secretary of State, at the seat of government, a certified copy of the abstract of votes given for Governor, Secretary of State, Auditor of State, Treasurer of State, and Attorney General. It is made the duty of the Secretary of State to safely keep the returns addressed to the Speaker of the House of Representatives until the same shall be required for the purpose of ascertaining and declaring the result of the election as prescribed in section 3, article VI, of the Constitution. *Act March 14, 1895.*

SEC. 2837. At any time before the county election commissioners shall finally complete the canvass of the returns and make declaration of the result thereof, any candidate voted for who may be dissatisfied with the returns from any precinct may have a recount of the votes cast therein, by presenting to the county election commissioners a petition showing reasonable grounds for believing that the return, as made by the judges of election, does not give a correct statement of the vote as actually cast, as the same is shown by the ballots returned with the certificate of the judges. Upon the prayer of such petition being granted, the commissioners shall open the package containing the said ballots and proceed to recount the same in the manner prescribed by law for the count to be made by the judges in the first instance, and the result as found upon such recount, if the same differs from that certified by the judges, shall be included in the canvass as the vote for the particular precinct for which said recount was ordered and made. After the recount is completed, the ballots shall again be sealed and kept as herein provided (u).

DISPOSITION OF BALLOTS AND CERTIFICATES.

SEC. 2838. The county election commissioners shall retain the custody of and safely keep all ballots

(u) The recount of the votes of a township by the commissioners in an election on question of license does not preclude a contest of the election in the courts. *Freeman v. Lazarus*, 61—247.

and certificates returned to them from the several precincts for a period of six months, after which time the same shall be destroyed, unless the commissioners shall be sooner notified in writing that the election of some person voted for at such election and declared to have been elected, has been contested, or that criminal prosecution has been begun against any officer of election, or person voting thereat, for any fraud in said election, before a tribunal of competent jurisdiction, in which event, so many of said ballots and certificates as may relate to matters involved in said contest, or any prosecution, shall be preserved for use as evidence in such contest or prosecution. During the time such ballots may be retained, the package containing the same shall not be opened by any one unless directed to do so by some competent tribunal before which an election contest or prosecution is pending, in which such ballots are to be used as evidence. Any person violating the provisions of this section, or who shall disclose how any elector may have voted, unless compelled to do so in a proceeding pending as aforesaid, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars. *Act March 4, 1891, sections 10-16.*

COMPENSATION OF COUNTY BOARD.

SEC. 2839. The members of the county board of election commissioners shall each receive for his services the sum of two dollars per day for each day actually engaged in the duties of his office, but in no event shall the number of days charged for exceed ten, for services to be rendered in connection with any particular election. *Ib., section 48.*

FEEES OF JUDGES AND CLERKS OF ELECTION.

SEC. 2840. The judges and clerks of the election shall receive one dollar per day for each day they may be engaged in holding an election, to be paid by the order of the county court, as other county expenses. *As amended by Act 263, 1907.*

SEC. 2841. There shall be allowed to each judge of the election carrying the returns from his township to the county board of election commissioners, five cents per mile in going and returning from the place of holding the election to the office of said board, to be paid by the county.

SEC. 2842. The county election commissioners shall certify to the county court the per diem of judges and clerks of election, and the mileage of the judge carrying the returns to the clerk's office for allowance. *Act February 25, 1875, sections 49, 50, 51, as modified by section 49, Act March 4, 1891.*

EXPENSES OF ELECTION.

SEC. 2843. All printing and other things required by this act to be done, except as provided in section 2844, shall be at the expense of the several counties in which they shall be done, respectively, and shall be defrayed in the same manner as other county general expenses are defrayed. *Act March 4, 1891.*

SEC. 2844. All expenses connected with the holding of any municipal election shall be borne by the respective municipalities, and no part thereof shall be a charge against the county in which such municipality may be situated. The per diem of the election commissioners, and that of the judges and clerks, shall be included in the expenses chargeable to such municipalities. In all elections in special school districts, the board of directors shall provide for the per diem of judges and clerks of such elections, as well as all other expenses connected therewith. *Act March 18, 1895.*

SEC. 2845. Sheriffs shall be allowed one dollar per day for services performed hereunder. *Act April 20, 1895.*

ELECTION PRECINCTS, CHANGES, ETC.

SEC. 2846. The county election commissioners are empowered to alter the boundaries of existing

election precincts and to establish new ones when, in their judgment, it may be necessary, and to fix a place in each election precinct where the election shall be held; and in changing the boundaries of existing precincts, or in creating new ones, the said commissioners shall so arrange the same that all qualified voters residing therein may vote on the same day. Provided, the said commissioners shall not have power to change the boundaries of existing precincts, or to create any new precinct, or to change the voting place in any precinct, within thirty days of any election, but all such elections shall be held at the places, and within the boundaries, as the same existed thirty days before the date of said election.

The action of said commissioners in changing the voting place in any precinct, or in altering the boundary of any precinct, or in establishing any new one, shall be entered in the record to be kept by them, and a copy of said order shall set out intelligently and accurately the boundaries of said precincts as so altered or established, shall be filed with the clerk of the county court, who shall record the same at full length on the record book in which the minutes of the proceedings of the county court are recorded. If the county election commissioners shall fail to fix a place in any precinct at which the election is to be held, it shall be the duty of the sheriff to fix temporarily a place of holding said election. Notice of any change made shall be given to the electors by posters put up in at least five public places in such precinct. All voting places shall be fixed at well-known points in the several precincts and easily accessible to all electors entitled to vote therein. *Ib.*, section 6.

PROCEEDINGS WHEN RETURNS ARE NOT MADE.

SEC. 2847. If there shall be a failure to receive at the seat of government the copy of the returns from any county, intended either for the Secretary of State, or the Speaker of the House of Representatives, for two days after the same is due, the Secretary of State shall

dispatch a messenger to the county from which said returns have not been received, with directions to bring up such returns or copies thereof. If such failure shall happen by neglect of the county election commissioners, they shall forfeit to the State the sum of one hundred dollars, together with the expense of such messenger, to be recovered by action of debt before any court having jurisdiction thereof. *Act March 4, 1891, section 17.*

CANVASS OF VOTES BY SECRETARY OF STATE.

SEC. 2848. It shall be the duty of the Secretary of State, in the presence of the Governor, within thirty days after the time herein allowed to make returns of election by the county election commissioners, or sooner, if all the returns shall have been received, to cast up and arrange the votes from the several counties, or such of them as may have made returns, or each person voted for as member of Congress; and the Governor shall immediately thereafter issue his proclamation, declaring the person having the highest number of votes to be duly elected to represent this State in the House of Representatives of the Congress of the United States, and shall grant a certificate thereof, under the seal of the State, to the person so elected.

SEC. 2849. Should any two or more persons have an equal number of votes, and a higher number than any other person, the Governor, in such case, shall issue his proclamation giving notice of such fact, and that an election will be held at the several places of holding elections in the district for such member of Congress, in which he shall mention the day on which the election is to be held, and it shall be conducted, and returns thereof made, agreeably to the provisions of this act.

SEC. 2850. It shall be the duty of the Secretary of State, in the presence of the Governor, within thirty days after the time herein allowed to make returns of elections by county election commissioners, or sooner,

if all the returns shall have been received, to cast up and arrange the votes from the several counties for each person voted for any legislative, judicial or executive office, except the offices named in section 3, article VI, of the Constitution; and such persons as shall have received the highest number of votes for Judge of the Supreme Court, Commissioner of State Lands; judges of the circuit court and prosecuting attorneys, in their respective districts or circuits; judges of the county and probate court, circuit clerk, county clerk, sheriff, coroner, surveyor and assessor, in their respective counties; and justices of the peace, in their respective townships, and all other officers required by law, shall be immediately commissioned by the Governor (v).

SEC. 2850a. If two or more persons have an equal number of votes for the same office, and a higher number than any other persons, the Governor, in such case, shall issue a writ of election, directed to the sheriff of the proper county or counties in which such election shall be held, on a day therein named, for the purpose of electing any legislative, judicial or executive officer, except the officers named in section 3, article VI, of the Constitution, and constables, where there appears to be a tie vote (w).

SEC. 2851. It shall be the duty of the Secretary of State, on the first day of each regular session of the General Assembly, to lay before each house a list of members elected agreeably to the returns in his office.

CANVASS OF VOTES FOR STATE OFFICERS.

SEC. 2852. The Speaker of the House of Representatives, during the first week of the session after each election for Governor, Secretary of State, Treasurer of State, Auditor of State and Attorney-General, shall, in the presence of both houses of the General Assembly, open and publish the votes cast and given for each of

(v) See *State v. Johnson*, 17—407.

(w) See sec. 675. See *art. XXII, Const. amendment No. 3*.

the respective officers hereinbefore mentioned. The person having the highest number of votes for each of the respective offices shall be declared duly elected thereto; but if two or more shall be equal and highest in votes for the same office, one of them shall be chosen by a joint vote of both houses of the General Assembly, and a majority of all the members elected shall be necessary to a choice. The President of the Senate and the Speaker of the House of Representatives shall make and deposit in the office of the Secretary of State a certificate declaring what persons have been elected to any offices named. *Act January 23, 1875, sections 60-64, as amended by section 49, Act March 4, 1891.*

VACANCIES IN OFFICE, ELECTIONS TO FILL (*).

SEC. 2853. When any vacancy shall happen in the office of a member of Congress from this State by death, resignation, removal or otherwise, it shall be the duty of the Governor, by proclamation, to order the several county election boards to order an election to be held, on a certain day to be named in such proclamation, to supply such vacancy, and such election shall be conducted in the same manner, and returns thereof made, as herein prescribed for general elections.

SEC. 2854. Whenever the office of governor shall have become vacant by death, resignation, removal from office or otherwise, provided such vacancy shall not happen within twelve months next before the expiration of the term of office for which the late Governor shall have been elected, the President of the Senate or Speaker of the House of Representatives, as the case may be, exercising the powers of Governor for the time being, shall immediately cause an election to be held to fill such vacancy, giving, by proclamation, sixty days' previous notice thereof, which election shall be governed by the same rules prescribed for general

(*) For vacancies filled by appointment by the Governor, see *art. XXII, Const.*

elections of Governor, as far as applicable; the returns shall be made to the Secretary of State, and the acting Governor, Secretary of State and Attorney General shall constitute a board of canvassers, a majority of whom shall compare said returns and declare who is elected; and if there be a contested election the same shall be decided as contests for the office of Supreme Judge. *Ib.*, sections 65, 66.

SEC. 2855. All special elections which may be held by virtue of the provisions of sections 2849, 2850a and 2853, whether in the case of a tie or to fill a vacancy, shall be holden within thirty days from the date of the writ of election. *Ib.*, sections 69, 70, as modified by Amendment No. 3 to Constitution.

CONTESTED ELECTIONS (x).

SEC. 2856. If the election of any Supreme Judge or Commissioner of State Lands, be contested, it shall be before the circuit court of Pulaski County. If the election of any circuit judge, prosecuting attorney, chancellor, a judge of the county and probate court, be contested, it shall be before the circuit court of the county where the defendant or contestee resides, or the county where the contestant resides and the contestee may be found (y).

SEC. 2857. All actions to contest the election of supreme judges shall be commenced within one year after the election or commissioning of said judges, and actions for contesting the elections of all other officers herein mentioned within six months after they are elected or commissioned.

(x) In trials of contested elections and in proceedings for the investigation of elections, no person shall be permitted to withhold his testimony on the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not be used against him in any judicial proceeding, except for perjury in giving such testimony. *Art. III, sec. 9, Const.*; *Whittaker v. Watson*, 68—555; *Payne v. Rittman*, 66—201; *Freeman v. Lazarus*, 61—247; *Aven v. Wilson*, 61—287; *Rhodes v. Driver*, 69—501.

(y) Has jurisdiction to determine contests of election for offices of mayor and marshal. *Whittaker v. Watson*, 68—555; *Payne v. Rittman*, 66—201.

SEC. 2858. All actions or proceedings for contests as herein mentioned shall be by complaint filed in the circuit court as other actions at law, in which the contestant shall plainly and fully set forth the grounds upon which the contest is found, and upon the trial of the same he shall be confined to such grounds as are therein mentioned, but may amend the same in such manner and upon such terms as do not prejudice his opponent.

SEC. 2859. If the contestant shall succeed in his action, he shall not only have a judgment of ouster, but for damages, not exceeding the salary and fees of the office during the time he was excluded therefrom, with costs of suit; provided, either party shall have the right to appeal, with or without *supersedeas*, as in other cases at law. *Ib.*, sections 67, 68.

SEC. 2860. When the election of any clerk of the circuit court, sheriff, coroner, county surveyor, county treasurer, county assessor, justice of the peace, constable, or any other county or township officer, the contest of which is not otherwise provided for, shall be contested, it shall be before the county court, and the person contesting any such election shall give the opposite party notice (z) in writing ten days before the term of the court at which such election shall be contested, specifying the grounds on which he intends to rely, and if any objections be made to the qualifications of voters, the names of such voters, with the objections, shall be stated in the notice, and the parties shall be allowed process for witnesses (a).

SEC. 2861. Either party may, on giving notice thereof to the other, take depositions to be read in evidence on the trial, and the court shall, at the first

(z) The notice of contest is the foundation of the action, and performs the double office of a writ and declaration. *Sweepston v. Barton* 39—549; *Vance v. Gaylor*, 25—32; *Rhodes v. Driver*, 69—501.

(a) This section is valid. *Glidewell v. Martin*, 51—559.
Jurisdiction to determine contest on question of liquor license; *Freeman v. Lazarus*, 61—247. County officers. *Aven v. Wilson*, 61—287; *Rhodes v. Driver*, 69—501.

term (if fifteen days shall have elapsed after such election, and if less than fifteen, then at the second term) in a summary way, determine the same according to evidence (b).

SEC. 2862. If the court shall be of the opinion that the person proclaimed elected is not duly elected, and the person contesting is elected, an order shall be entered to that effect, and a copy thereof shall forthwith be transmitted to the Governor, who shall commission the person declared duly elected by such order.

SEC. 2863. If the person proclaimed duly elected shall have been commissioned previous to making the order annulling his election, it shall be the duty of the Governor to cause such person to be notified that his commission is revoked (c).

SEC. 2864. Nothing in this Act shall be construed so as to make void any act of the person so commissioned that would otherwise have been lawful. *Ib.*, sections 71-75.

(b) Neither party has the right to demand a jury; either in the county court or in the circuit court, on appeal. *Govan v. Jackson*, 34—553; *Wise v. Martin*, 36—305.

The real inquiry upon a contest is whether the contestant or the respondent received the highest number of legal votes, and it is not confined to the ground specified in the notice of contest. The respondent may, without any cross-contest, which is not contemplated by the statute, call in question the validity of the votes cast for the contestant either in the township specified in the notice, or any other township in the county. *Govan v. Jackson*, *supra*; *Sweepston v. Barton*, 39—549. The ineligibility of a party elected to office does not render the votes cast for him illegal, nor give the election to his competitor next highest in the poll. *Sweepston v. Barton*, *supra*. On the questions of fraud on the part of election officers and others, intimidation of voters and illegal voting, see *Patton v. Coates*, 41—111. The poll books and certificates of the election officers are *prima facie* evidence of an election. *Ib.* Refusing legal or receiving illegal votes will not affect the election unless they were sufficient in number to change the majority. *Sweepston v. Barton*, *supra*. See, also, *Dixon v. Orr*, 49—238; *Powell v. Holman* 50—85; *Jones v. Glidewell*, 53—161; *Rucks v. Renfrow*, 54—409; *Merritt v. Hinton*, 55—12; *Whittaker v. Watson*, 68—555; *Freeman v. Lazarus*, 61—247, and *Rhodes v. Driver*, 69—501.

Evidence must be taken by depositions. *Davis v. Moore*, 70—240. No cost allowed for summoning witnesses and their attendance. *Ib.*

(c) As to withholding commission by the Governor, where the party elected is a defaulting collector or holder of public money, see *Sweepston v. Barton*, 39—549.

CONTESTANT TO GIVE BOND FOR COSTS.

SEC. 2865. In all suits brought in any of the circuit courts, or in any of the county courts in this State, to contest the election of any State, district, circuit, county or township officer, the contestant shall be required to enter into a bond, with good and sufficient security, to be approved by the clerk of the court in which such suit shall be brought, conditioned that the contestant and his securities will pay to the contestee or defendant in the action and the officers of court such sum of money as shall be adjudged against him in the court in which the suit shall be brought, or in any other court to which it shall be carried by appeal or otherwise.

SEC. 2866. The contestant in such suits as are contemplated in the preceding section, shall not proceed with his case in any manner, save filing his complaint, or take any testimony in his case until he shall have filed in the clerk's office and obtained the approval of such a bond as is contemplated in said section.

SEC. 2867. If, upon the trial of any such suit as is mentioned in section 2865, judgment shall be rendered against the contestant, judgment shall immediately be rendered against him and his securities in the bond for costs in favor of the contestee or defendant in the action and the officers of court for the amount due them as costs in the case (d). *Act February 24, 1879, sections 1, 2 and 4.*

CONTESTING ELECTION OF SENATORS AND
REPRESENTATIVES.

SEC. 2868. If any candidate of the proper county or district contests any election of any person returned duly elected to the State Senate or House of Representatives, such person shall give notice thereof, in

(d) When judgment rendered against contestant no notice is necessary to sureties on cost bond before rendering judgment against them. *Mills v. Sanderson*, 68—130.

writing, to the person whose election he contests, or leave a written notice thereof at the house where such person last resided, within twenty days after the return of the election to the office of county election commissioners, expressing the points on which the same will be contested and the names of the two justices of the peace who will attend to the taking of the depositions, and when and where they will attend to take the same. *Act January 23, 1875, section 76, as amended by section 49, act March 4, 1891.*

SEC. 2869. The time for taking depositions in chief on part of the contestant shall not exceed thirty days from the day of the election. The justices, or either of them, shall issue subpoenas for all witnesses required by the contestant, commanding such persons to appear before them to testify at the time and place therein mentioned.

SEC. 2870. The contestant shall close his evidence in chief before the contestee commences, and if the contestee does not desire to take any depositions, and so states to the justice, then, in that event the justice shall close the case and transmit the papers as herein directed.

SEC. 2871. If the contestee desires to take any proof on any point not set out in the notice served on him, he shall serve a notice in writing on the contestant, setting forth the ground of his cross-contest or new points to be raised on his part, and naming therein some person authorized to take depositions before whom the depositions are to be taken, and such notice to be served at least three days before the commencing to take depositions.

SEC. 2872. The contestee shall be confined to the grounds or points set out in the notice given by him, and the contestant, after the conclusion of the evidence taken by the contestee, may produce evidence on the said grounds or points; all of his evidence shall be closed

at least ten days before the day fixed for the meeting of the General Assembly.

SEC. 2873. The contestant may take rebutting testimony up to the day before the meeting of the General Assembly, but shall take no evidence thereafter. *Ib.*, section 77, as amended by act March 3, 1883.

SEC. 2874. If any person summoned as a witness to testify in any contested election shall fail to attend, his attendance may be compelled by attachment.

SEC. 2875. The justices shall hear and certify all testimony relative to such election to the President of the Senate, if the contest is for a seat in the Senate; and if for a seat in the House of Representatives, then to the Speaker of the House of Representatives.

SEC. 2876. No testimony shall be received on the part of the person contesting the election by the justices which does not relate to the points specified in the notice, a copy of which notice, attested by the person who delivered or served the same, shall be delivered to the justices, and be by them transmitted with the depositions. *Ib.*, sections 78-80.

CONTEST FOR THE OFFICE OF GOVERNOR, SECRETARY OF STATE, ETC.

SEC. 2877. All contested elections of Governor, Secretary of State, Treasurer of State, Auditor of State and Attorney General, except as herein provided, shall be decided by the joint vote of both houses of the General Assembly, and in such joint meeting the President of the Senate shall preside (e).

SEC. 2878. If any person contests the election of Governor, he shall present his petition to the General Assembly, setting forth the points on which he will contest the same and the facts which he will prove in

(e) See art. VI, sec. 4, Const.; *Baxter v. Brooks*, 29—173; *State etc., v. Baxter*, 28—129.

support of such points, and shall pray for leave to introduce his proofs, and a vote shall be taken by yeas and nays in each house whether the prayer shall be granted.

SEC. 2879. If a majority of the whole number of votes of both houses shall be in the affirmative, they shall appoint a joint committee to take testimony on the part of the petitioner, and also on the part of the person whose place is contested, with power to send for witnesses; who may issue warrants, under the hand of the chairman, to any judge or justice of the peace to take the depositions of witnesses at such time and place as the warrant shall direct, and the points to which the testimony is to be taken shall be set forth in such warrant.

SEC. 2880. Reasonable notice shall be given by the party in whose favor depositions shall be allowed to be taken to the opposite party of the time and place of taking the same, and the judge or justice shall proceed in all things, in the attendance of witnesses and in taking and certifying the testimony, as is directed in the preceding section.

SEC. 2881. The party shall also be allowed to attend the examination of witnesses before the committee, and to cross examine them, but no testimony shall be taken except in relation to the points set forth in the petition.

SEC. 2882. The committee shall report the facts to the two houses, and the day shall be fixed by a joint resolution for the meeting of the two houses to decide upon the same, on which decision the yeas and nays shall be taken and entered on the journal of each house.

PRESIDENTIAL ELECTORS—WHEN CHOSEN, ETC. (f).

SEC. 2883. The election or appointment of electors for President and Vice President of the United

(f) The courts of the State have jurisdiction to punish violations the election laws in elections for presidential electors, notwithstanding representatives in Congress are voted for at the same election. *Mason v. State*, 55—529; *In re Green*, 134 U. S., 377.

States shall be had and held on the Tuesday next after the first Monday in the month of November of the year eighteen hundred and seventy-six, and every four years thereafter.

SEC. 2884. The qualified voters in this State shall meet at their respective places of holding elections, and shall proceed to choose as many fit and proper persons as the State shall be entitled to as electors of President and Vice President, which election shall be conducted by the judges who may have been appointed to hold the general election of the State for the same year, and under the same regulations as are or may be required by the law regulating such general election; and it shall be the duty of the judges of such election, in the different townships, to make returns thereof to the board of county election commissioners within five days after such election; which boards shall, within five days after they receive such returns, certify and transmit the same by some person employed for that purpose, or by mail, to the Governor, whose duty it shall be, within twenty days after the day of election, to add up the votes from the several counties, and the persons having the highest number of votes shall, by him, be declared elected; and it shall be the duty of the Governor, at the expense of the State, in all cases, immediately to notify the persons chosen of their election as soon as the same shall have been ascertained, agreeably to the provisions aforesaid.

SEC. 2885. The Governor shall, on or before the meeting of such electors, cause three lists of the names of such electors to be made and delivered to them; and the person employed in giving the notices, or conveying the returns, as aforesaid, shall be allowed ten cents per mile for every mile such person may travel in going and returning in the performance of the service aforesaid, to be audited and paid as other claims.

SEC. 2886. The electors shall meet at the seat of government on the second Monday in January next

ensuing their appointment, and shall then and there give their votes for President and Vice President, and shall do and perform all other duties required of them by the act of Congress in that case made and provided.

SEC. 2887. Each elector for President and Vice President of the United States shall have and receive as a full compensation for his services the sum of two dollars for every twenty miles of travel from his residence and return to his home, and four dollars per diem for every day engaged at the seat of government in casting the vote for President and Vice President of the United States.

SEC. 2888. If the electors appointed under this act, or any of them, fail to attend at the seat of government by the hour of two o'clock in the afternoon of the day pointed out in this act for electing President and Vice President of the United States, then, and in that case, the General Assembly, if in session, shall proceed immediately, by a joint vote of the two houses, to fill such vacancy or vacancies; but if said General Assembly shall not on said day be in session, then, and in that case, the Governor shall immediately fill such vacancy or vacancies.

SEC. 2889. No senator or representative in Congress, or any person holding an office of trust or profit under this State or the United States, shall be eligible as an elector of President and Vice Prsident.

SEC. 2890. In case the election of said electors, or any of them, be contested, it shall be decided as provided by this act for contesting the election of a judge of the Supreme Court. *Ib.*, 92-99, *as amended by act March 4, 1891, and act of Congress, February 3, 1887.*

SEC. 2891. When not otherwise provided, this chapter shall apply to and govern the election of all officers required to be elected. *Act January 25, 1875, section 101.*

PRIMARY ELECTIONS.

SEC. 2893. The judges and clerks selected to hold said election shall possess the same qualifications as are required for judges and clerks under the law governing general elections in this State, provided that all shall be of the same political party as that for which said primary election is held.

SEC. 2894. The judges holding said primary election, before entering upon their duties, shall qualify before some officer duly qualified to administer an oath, and they shall then have power to administer oaths to the clerks of said election and to voters when deemed necessary to ascertain the qualifications of electors.

PENALTIES.

SEC. 2895. Any judge or clerk serving at any such primary election who shall in any manner falsify the returns of the same, or knowingly make a false count of the ballots cast, or aid or abet any such act of another person, or knowingly permit such to be done by others, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than two hundred dollars, and imprisoned in the county jail not less than thirty days.

SEC. 2896. Any person voting in said primary election not possessing all of the qualifications of an elector as required under the general election laws of the State, or who shall cast more than one ballot in said election, or accept any money or its equivalent for his vote, or use any money or its equivalent, to influence the vote of any other person, or employ any force, threats or intimidation to influence the vote of any other person, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifty dollars nor more than two hundred dollars and imprisoned in the county jail not less than

thirty days. Every repetition of any or either of the acts herein specified shall constitute a separate offense. *Act April 20, 1895.*

SEC. 2897. It shall be unlawful for any person to sell or give away, or to cause to be sold or given away, or used or furnished in any manner or form, any intoxicating liquors during the day of, or succeeding night of, any legalized primary election, held by any political party in any county, city, township or ward; and any person selling or giving away, or causing to be sold or given away, or furnished in any manner or form, any intoxicating liquors during said day or night in which any such legalized primary election may be held, shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than one hundred dollars for each and every offense, or imprisoned not less than six months or both. *Act March 3, 1897.*

ELECTION, APPOINTMENT AND QUALIFICATION OF OFFICERS.

SEC. 5433. The elections in cities of the first and second class shall be held on the first Tuesday in April, as provided in sections 5596 and 5589, respectively, and the annual election of incorporated towns shall be held on the first Tuesday in April of each year; and all officers whose election is provided for by this act, or any ordinance, shall be elected on that day. Special elections of the members of the city council of all cities and incorporated towns shall be held at such time and place as the mayor by proclamation shall direct, so that 'at least ten days' notice thereof shall be given. Special elections herein authorized to be held shall be held at such time and place as the city council may direct (d). In all cities there shall be a place appointed in each ward for holding elections. Any person who, at the time of the election of municipal officers, is a qualified voter under the laws of the State, for State or county

(d) *Rittman v. Payne*, 68—338.

officers, and has resided within the corporation for six months next preceding the election and thirty days in the ward where he offers to vote, shall be deemed a qualified elector. All elections shall be held and conducted in the manner prescribed by law for holding State and county elections, so far as the same may be applicable. *Act March 9, 1875, section 71; acts March 28, 1885, and February 15, 1887.*

SEC. 5434. The returns of all municipal corporations shall be made to the election commissioners of the county in which the corporation is situated, and shall be by them opened within three days after receiving the same, who shall count the vote as the same appears from the poll books, make an abstract thereof, and forward the same to the mayor; they shall in like manner and without delay, furnish to each candidate elected a certificate of election, or leave the same at his usual place of abode. *Ib., section 2, as amended by section 49, act March 4, 1891.*

SEC. 5435. All officers elected or appointed in any municipal corporation shall take the oath or affirmation prescribed by the Constitution of this State, for officers. The aldermen or council may require from such officers as they think proper a bond with good and sufficient security, with proper penalty, for the faithful discharge of their offices and duties; and shall have power to declare the office of any person elected vacant who shall fail to take the oath of office or give the bond herein required within ten days after he shall have been notified of his election or appointment, and proceed to appoint as in other cases of vacancy. *Ib., section 73.*

APPLICABLE TO CITIES OF THE SECOND CLASS AND INCORPORATED TOWNS.

SECTION.

- 5548. Charters of cities of second class and incorporated towns may be surrendered.
- 5549. On what petition question of surrender to be submitted to electors of corporation.
- 5550. Election, how conducted.
- 5551, 5552. Proceedings when result of election is in favor of surrender.

SURRENDER OF CHARTERS AND PROCEEDINGS THEREON.

SEC. 5548. The charters and all the amendments thereto of all municipal corporations within this State designated as cities of the second class and incorporated towns may be surrendered, all offices held thereunto abolished and the territory and inhabitants thereof remanded to the government of this State in the manner hereinafter provided.

SEC. 5549. Whenever one hundred qualified electors of any city of the second class, or twenty-five qualified electors of any incorporated town shall petition the city or town council thereof asking the surrender of the charter of said municipal corporation, it shall be the duty of said city or town council immediately to submit the question whether such surrender shall be made to the qualified electors of said municipal corporation at an election to be held for that purpose, after having given notice of such election four weeks by advertisement in one of the newspapers published in said corporation, or if there be no newspaper published therein, by advertisement posted in two or more public places in said corporation.

SEC. 5550. Said election shall be held and conducted by, and the returns thereof shall be made to, said city or town council in such manner as by said city or town council may be directed.

SEC. 5551. When said returns shall have been made as aforesaid, it shall be the duty of said city or town council to count the votes cast at said election, and if a majority of the votes so cast shall be in favor of the surrender of the charter of such municipal corporation, the said city or town council shall present to the county court of the county in which said corporation is situated, a petition showing that an election has been held as aforesaid and the result thereof, and praying that the charter of said municipal corporation may be surrendered.

SEC. 5552. If it shall appear to the satisfaction of said court that said election has been held as aforesaid, and that a majority of the votes cast at said election was in favor of the surrender of the charter of such municipal corporation, it shall be the duty of said county court to make and enter upon its record an order declaring the charter and all the amendments thereto of said municipal corporation to be surrendered under the provisions of this act, and shall order the clerk of said court to make out and certify under his official seal two transcripts of said order, one of which said clerk shall forward to the Secretary of State, to be kept on file in his office, and the other he shall deliver to the recorder of said county, whose duty it shall be to record the same in his office.

CITIES OF THE SECOND CLASS.

SECTION

5589. Mayor and aldermen; how and when elected.

5591. Marshal, recorder and treasurer; election, tenure of office and duties of latter two.

SEC. 5589. The qualified voters of cities of the second class shall, on the first Tuesday in April, in the

year eighteen hundred and eighty-eight, and on the same day every two years thereafter, elect one mayor, one city marshal, one recorder, one city treasurer, and for each of the wards of any such cities, two aldermen, which aldermen together with the mayor shall compose the city council. *Act February 15, 1887.*

SEC. 5591. The qualified voters of each city of the second class, shall, at the same time, elect a city marshal, city recorder and treasurer. Each of said officers shall continue in office until his successor is elected and qualified, and shall have such powers and perform such duties as are prescribed in this act, or as may be prescribed by any ordinance of such city, not inconsistent with the provisions of this act. *Ib., section 49, as amended by act February 28, 1881.*

CITIES OF THE FIRST CLASS.

ELECTION OF OFFICERS, SALARIES, DUTIES OF.

SECTION

5596. Officers; what and when elected.

5597, 5598. Aldermen; election, qualifications, etc.

SEC. 5596. The qualified voters of cities of the first class shall on the first Tuesday in April 1875, and every two years thereafter, elect one mayor, one city treasurer and one police judge, who shall hold their offices two years, and until their successors are elected and qualified, and shall have such powers and perform such duties as are required by law, or may be prescribed by any ordinance of the city not inconsistent with this chapter. Also one city clerk and one city attorney shall be elected in 1894 and every two years thereafter, who shall hold office for two years, and until their suc-

cessors are elected and qualified; who shall give the bond, perform the duties and receive such salary as is now or may hereafter be prescribed by ordinance in each of said cities of the first class. *Acts March 9, 1875, section 51; March 28, 1885, and April 11, 1893.*

SEC. 5597. There shall also be elected at such election aldermen by the qualified electors of the entire city, two aldermen for each ward, who shall reside in their several wards, as now provided by law. *Act March 9, 1875, section 51, as amended by act March 21, 1893.*

SEC. 5598. The aldermen shall be residents of their respective wards, and when they shall have organized, as hereinafter provided, they shall proceed to determine by lot the time of service of each alderman so elected, so that one of the aldermen of each ward shall serve for the term of two years, and the other for one year; and at every succeeding general election to be held therein one alderman shall be elected by the qualified voters of said ward, who shall possess the qualifications hereinbefore required, and whose term of service shall be two years, so that the terms of two aldermen of each ward shall always expire on different years, and the persons thus chosen shall hold their offices until their successors are elected and qualified.

ANNUAL SCHOOL ELECTION.

SECTION.

7588, 7589. When held; who may vote.

SEC. 7588. The male residents in each organized school district in this State over the age of twenty-one years, who have paid their poll tax and resided therein for thirty days and within the State for a period of one

year, and in the county six months previous to said elections, shall annually on the third Saturday in May, at two o'clock p. m., hold a public meeting to be designated, "The annual school meeting of the district," and each school district for the purpose of school elections alone, shall be a political township. *Act January 10, 1897, section 1.*

SEC. 7589. All persons qualified to vote for county and State officers at the general election shall be deemed qualified electors of the school district in which they reside, and shall have the privilege of voting at all school meetings.

SEC. 7590. The electors of every school district shall, when lawfully assembled in annual district school meeting, with not less than five electors present, have the power, by a majority of the votes cast at such meeting; first, to choose a chairman; second, to adjourn from time to time; third, to appoint, when necessary, in the absence of the directors of the district, a clerk *pro tem.*; fourth; to elect a director for the district for the next three school years, who can read and write; fifth, to designate a site for a schoolhouse; sixth, to determine the length of time during which a school shall be taught more than three months in a year; seventh, to determine what amount of money shall be raised by tax on the taxable property of the district sufficient, with the public school revenues apportioned to the district, to defray the expenses of a school for three months, or for any greater length of time, they may decide to have a school taught during the year; provided, no tax for the purposes aforesaid greater than one-half of one per cent on the assessed value of the taxable property of the district shall be levied; and provided further, they may, if sufficient revenue can not be raised to sustain a school for three months in any one year, determine by ballot that no school shall be taught during such year, in which case the revenue belonging to such district shall remain in

the treasury to the credit of such school district; eighth, to repeal and modify their proceedings from time to time (k).

SEC. 7591. The annual district election shall be held by the school directors as judges, who shall have power to appoint two clerks; and if any of the directors should not attend, the assembled voters may choose judges in the place of those not attending, and the judges and clerks shall take the oath prescribed by the general election law; provided, that it shall be lawful for the county court of any county at the April term thereof to enter an order adjudging that the general election law shall apply to any school election to be held in said county for said year, and thereupon it shall be the duty of the sheriff of said county to publish his proclamation of said election, and the county election commissioners shall appoint judges to hold said election in the respective school districts, and said election of directors and the voting of said school tax shall be held subject to and conform to all the requirements of the general election laws of the State of Arkansas; but this act shall not be construed to interfere with or in any way to diminish the rights and duties of the assembled electors as to the matters to be passed upon in open meeting. The expenses of the election herein provided for shall be paid out of the general county fund as the expenses of general elections are now paid. *Act April 10, 1903, section 1.*

SEC. 7592. The ballot of the voter shall, in addition to the name of the persons voted for as directors, have written or printed on it the words "For tax," or "Against tax," and also the amount of tax the voter desires levied. *Act April 10, 1893.*

(k) Directors have no power to build a schoolhouse with funds of the district unless authorized to do so at the annual school meeting, and a contract made for such purpose under authority conferred by a special meeting held in June is void. *Fluty v. School District*, 49—94.

Electors may suspend school and devote entire revenue for year to building schoolhouses. *Hale v. Brown*, 70—471.

SEC. 7593. When the polls are closed (1) the judges shall proceed to count the votes, ascertain the result and make return thereof to the county court, showing the number of votes cast for each person voted for for school director, also the number cast for and against tax, and the number of votes cast for each amount or rate of tax voted for (m); such return, together with the ballots, shall be sealed up and delivered by one of the judges to the county clerk, within twenty days after the election, and it shall be the duty of the county clerk to make a record of these returns and present same to the county court when it meets for the purpose of levying taxes.

SEC. 7594. The county court, at its meeting for levying taxes, shall take the record of the county clerk and ascertain whether the majority of votes cast be for tax; and if a tax has been voted, then the county court shall determine the amount of taxes voted by taking the largest amount or rate of taxation voted for by a majority of the voters, which shall be levied and collected by the district so voting, and if no rate shall have received such majority, then all the votes cast for the highest rate shall be counted for the next highest, and so on, till some rate voted shall receive a majority of all the votes cast. *Act March 16, 1901, sections 1, 2.*

SEC. 7595. All taxes voted for school purposes by any school district shall be levied by the county court at the same time the county taxes are levied, and shall be collected in the same manner as the county taxes are collected, at the same time and by the same

(1) As to time for opening and closing the polls, see *Holland v. Davies*, 36—446.

(m) Unless the judges make return of the election or vote to the county court, it can not levy the tax. *Hodgkin v. Fry*, 33—716. The omission of the judges to state in their return the number of votes cast for and against the proposed tax will not defeat a levy adopted by the meeting. *Holland v. Davies*, 36—446; *Staley v. Leomans*, 53—428. As to other irregularities, see *Holland v. Davies*, *supra*, and *Rogers v. Kerr*, 42—100.

person, and be paid into the county treasury, there to be kept subject to disbursement on the warrant of the school directors; provided, no tax for the purposes aforesaid greater than one-half of one per cent on the assessed value of the taxable property of the district shall be levied, which shall be done by ballot (n). *Act December 7, 1875, section 41.*

SCHOOL DIRECTORS.

SEC. 7607. At the annual school meeting, held on the third Saturday in May, there shall be elected by the legal voters in each school district a director, who shall hold his office for the term of three years and until his successor shall have been elected and have qualified. Provided, at the first annual school meeting of the district after the passage of this act three school directors shall be elected to hold office one, two and three years, respectively; and provided further, when a new school district shall have been formed under the provisions of this act, three directors shall be immediately elected by the electors of the new district, and shall hold their office for one, two and three years, respectively, and until their successors are elected and qualified, as herein provided for. *Act December 7, 1875, section 57, as amended by act March 11, 1881, section 2, and act January 30, 1889.*

SEC. 7608. The judges of any school election of this State for school directors shall within five days after said election give to the said elected director a certificate of his election, who shall within ten days thereafter take the oath of office prescribed for directors, and file the same, together with his certificate of election, with the county clerk of his county, and enter at once upon the duties of his office. *Act January 30, 1889.*

(n) The county court has no power to levy a school tax independent of action on the part of the electors of each school district for which the tax is levied; it can only cause to be placed on the tax books and collected such rates as are reported from the districts. An excessive levy vitiates the whole tax. *Worthen v. Badgett*, 32—496. See *Railway v. Parks*, *Ib.*, 131; *Rogers v. Kerr*, 42—100.

SEC. 7609. An old director shall, upon application of an incoming director, administer to him the oath of office. *Act March 11, 1881, section 5.*

SEC. 7612. If the office of any director in a district becomes vacant, the electors of said district shall, in a district meeting assembled within fifteen days after the occurrence of such vacancy, elect a director to serve the remainder of the unexpired term; but if the district in which such vacancy occurs neglect or fail to elect a director to fill such vacancy, then the county court shall appoint from the electors of said district a director to serve the remainder of the term.

ACT 265.

AN ACT to amend section 2771 of Kirby's Digest of the Statutes of Arkansas.

SECTION

1. Amends section 2771 of Kirby's Digest relating to list of those who have paid poll tax.

2. Laws in conflict repealed; Act in force from passage.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That section 2771 be amended so as to read as follows: Section 2771. On the first Monday in July of each year the collector shall file with the county clerk a list containing the correct names, alphabetically arranged, according to political or voting townships, and according to color, of all persons who have up to and including that date paid the poll tax assessed against them respectively. The correctness of this list shall be authenticated by the affidavit of the collector in person. The county clerk shall at once record the said list in a well-bound book to be kept for that purpose, and on or before the 15th day of July shall deliver to the county election commissioners, or to the chairman or secretary of the said board, a

certified copy thereof. The original shall be kept on file in the office of the said clerk, free to the inspection of all the electors of said county, and the clerk shall, on demand accompanied by the fee prescribed by law for making a copy of any instrument for record, make a copy thereof for any person. The county election commissioners shall cause to be printed a sufficient number of said lists to supply to each judge of election at every general or special election a copy thereof, to be sent to such judge with the ballots and blank poll books now directed to be sent preparatory to holding an election. The said election commissioners are authorized to have said printing done at an expense not to exceed one dollar and fifty cents for each one hundred names on said list. The fees of the county clerk for all services to be rendered by him in filing, recording and furnishing to the election commissioners a certified copy of said list shall be ten cents for each one hundred words contained in said list and the certified copy so furnished to said commissioners.

SEC. 2. That all laws in conflict herewith are hereby repealed, and this Act shall take effect from and after its passage.

Approved May 6, 1905.

ACT 328.

AN ACT to provide for contests in legal primary elections.

SECTION

1. Defeated candidates may contest in chancery courts.
2. Power chancellor to bring ballots, etc., before him.
3. Chancellor to hear case speedily as possible.
4. Repeals all laws in conflict; Act takes effect at passage.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That any defeated candidate at any legalized primary election in this State may contest such an election before the chancellor at chambers, or the chancery court of the chancery district in which such an election took place, by giving the contestee five days' notice in writing, which notice shall be served as other process is served, and by filing a complaint in equity setting forth the grounds of such contest in the county where such contest originated. Said contest shall be heard by such chancellor at chambers, or the chancery court if it be in session, in the county where the contest originated, upon depositions, affidavits, or oral testimony.

SEC. 2. The chancellor at chambers or the chancery court shall have the power to have the ballots, ballot boxes, poll books, and tally sheets used at such an election brought before him and investigated, and the ballots recounted, and do all other acts and things necessary to arrive at the true result of such an election.

SEC. 3. The chancellor at chambers or the chancery court shall hear and determine such contest speedily and without delay, to the end that the name of the successful candidate may be certified as required by law and printed on the ballots to be voted at the ensuing election.

SEC. 4. That all laws and parts of laws in conflict herewith are hereby repealed, and this Act shall take effect and be in force from and after its passage.

[This bill having remained in the hands of the Governor twenty days (Sundays excepted), and the General Assembly having adjourned, it has become a law this 24th day of May, 1905.]

ACT 70.

AN ACT to change the time for holding the general election in the State of Arkansas, and for other purposes.

SECTION

1. Changes time of general election to second Monday in September.
2. All mills, mines, shops and factories required to suspend in order to let employes vote.
3. Penalty for failure to comply with section 2.
4. Laws in conflict repealed; Act in effect second Monday in September, 1908.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That section 2762 of Kirby's Digest be amended to read as follows: "Section 2762. On the second Monday in September, nineteen hundred and eight, and every two years thereafter, there shall be held an election in each precinct and ward in this State for the election of all elective State, county and township officers, whose term of office is fixed by the Constitution at two years; and State senators in their respective districts when the terms for which senators may have been elected shall expire before the next general election; and for judges of the Supreme and circuit courts when the term of office of any judge shall expire before the next general election; and for prosecuting attorneys."

SEC. 2. That all mills, mines, shops and factories in the State of Arkansas shall suspend work on the day of each general election, or change the working force of employes, not later than four o'clock p. m. in order that their employes may exercise the right of franchise.

SEC. 3. That any superintendent, proprietor, manager or other person in control of any mill, mine, shop or factory in the State of Arkansas who shall fail or refuse to comply with the provisions of section 2 of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than \$25 nor more than \$250.

SEC. 4. All laws and parts of laws in conflict herewith are hereby repealed, and this Act shall take

effect and be in force on and after the second Monday in September, nineteen hundred and eight.

Approved March 8, 1907.

ACT 263.

AN ACT to amend section 2840 of Kirby's Digest of the Statutes of Arkansas.

SECTION

1. Section 2840 of Kirby's Digest, amended by fixing compensation of judges and clerks of elections.
2. Laws in conflict repealed; Act in effect from passage.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That section 2840 of Kirby's Digest of the Statutes of Arkansas be and the same is hereby amended so as to read as follows:

"The judges and clerks of the election shall receive one dollar and fifty cents per day for each day they may be engaged in holding an election, to be paid by the order of the county court, as other expenses."

SEC. 2. That all laws and parts of laws in conflict with this Act are hereby repealed, and this Act shall take effect and be in force from and after its passage.

Approved May 7, 1907.

ACT 165.

AN ACT to regulate primary elections in Arkansas.

SECTION

1. Legalizes all primary elections.
2. County central committee to select judges and clerks of primary elections.

3. Judges shall qualify before assuming duties, and shall administer oaths to clerks and voters. Penalty for performing duties without taking oath.
4. Felony for judges or clerks to falsify election returns.
5. Misdemeanor to solicit gifts from candidates for office.
6. Misdemeanor for candidates to offer gifts to persons during time of candidacy for office.
7. Candidates must file statement of expenditures connected with campaign.
8. Candidates for State offices, Congress and United States Senator shall file statement of expenses with Secretary of State. Penalty for failure to comply.
9. Felony for voting more than once at each election, etc.
10. Judges and clerks to take same oath as prescribed for general elections judges and clerks.
11. Act to take effect from passage; repeals all laws in conflict, and especially repeals section 2892, Kirby's Digest.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION. 1. Whenever any political party in this State shall, by primary election, nominate any person to become a candidate at any general election, regular or special, or before the Legislature for United States Senator or for Congress or any legislative, judicial, State, district, county, township, or municipal office, the said primary election shall be, and is, hereby made a legal election.

SEC. 2. The county central committee of the party holding said primary election shall select the judges and clerks to serve at said primary election, and said judges and clerks shall possess all qualifications required of judges and clerks of general elections. Provided, that in said primary election the judges and clerks shall be of the same political party for which said primary election is held.

SEC. 3. The judges holding such primary election, before entering upon their duties, shall qualify before some officer duly authorized to administer oaths, and they then shall have power to administer oaths

to the clerks for the said primary election and to voters when deemed necessary to ascertain qualifications of electors. If any judge or clerk shall perform any of the duties of their respective positions before taking and subscribing to the oath provided for in this section, he shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than \$25.00 nor more than \$100.00

SEC. 4. Any judge, or clerk, serving at any such primary election, who shall in any manner falsify the returns of the same, or knowingly make a false count of the ballots cast, or aid or abet any such act of any other person, or knowingly permit such to be done, shall be deemed guilty of a felony, and upon conviction thereof shall be confined in the State penitentiary at hard labor for a period of not less than six months, nor more than five years.

SEC. 5. Any person who shall solicit or accept for himself or for another any gift or donation of any kind or character from a person who is a candidate for any office, or who is a candidate for nomination to become a candidate for any office such person soliciting or accepting such gift or donation shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25.00, nor more than \$300.00, and each donation or gift solicited or accepted shall constitute a separate offense.

SEC. 6. Any person who is candidate for any office in this State, or a candidate for the nomination to become the candidate at any general election, who shall give or offer to give any gift or donation to any person during the time that he is a candidate, such candidate, giving or offering to give, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than \$25.00 nor more than \$300.00.

SEC. 7. Any person who shall become a candidate before any primary election in this State for any

district or county office shall, within fifteen days after such primary election is held, file with the county clerk of his home county a verified itemized statement of all expenses incurred by him, which is in any way connected with his campaign, covering the entire time that such person is a candidate.

SEC. 8. Any person who shall become a candidate before any primary election in this State for nomination to become a candidate at any general election for any State office, for Congress, or to become a candidate for United States Senator before the Legislature, shall, within thirty days after such primary election is held, file with the Secretary of State a verified itemized account of all campaign expenses incurred by him during such time as he may have been a candidate before such primary. Any failure or refusal of any candidate to comply with sections 7 and 8, as herein set out, shall be regarded as a violation of this Act, and such candidate so offending shall, upon conviction, be fined in any sum not less than \$50.00, nor more than \$1,000.00.

SEC. 9. Any person voting in any primary election, not possessing all the qualifications of an elector, as required under the general laws of this State, or who shall cast more than one ballot in the said primary election, or accept any money or its equivalent for his vote, or use any money or its equivalent to influence the vote of any other person, or employ any force, threat or intimidation to influence the vote of any other person, shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary at hard labor for not less than six months, nor more than five years. Every repetition of either or any of the acts specified in this or the preceding sections shall constitute a separate offense.

SEC. 10. Judges and clerks of primary elections shall take and subscribe to the oaths prescribed for judges and clerks for general elections.

SEC. 11. This Act shall take effect and be in force from and after its passage, shall repeal all laws in conflict herewith, and shall especially repeal section 2892, Kirby's Digest.

Approved April 23, 1909. Amended by Act 18, 1911.

ACT 201.

AN ACT providing for the filling of vacancies in the office of mayor of cities of the second class.

SECTION.

1. Aldermen to fill vacancies in the office of mayor in cities of the second class.
2. Laws in conflict repealed; Act in force from passage.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That whenever a vacancy shall occur in the office of mayor in any city of the second class, from any cause, the city council shall, at the first regular meeting after the occurrence of such vacancy proceed to elect by a majority vote of all the aldermen a mayor to serve for the unexpired term.

SEC. 2. That all laws and parts of laws in conflict with this Act are hereby repealed, and that this Act be in force from and after its passage.

Approved May 1, 1909.

ACT 18.

AN ACT to amend section two (2) of Act 165 of the Acts of 1909, approved April 23, 1909.

SECTION

1. Amends section 2 of Act 165 of 1909.
2. Act takes effect from and after its passage.

Be It Enacted by the People of the State of Arkansas:

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That section 2 of Act 165 of the Acts of 1909 be so amended as to read as follows:

“The county central committee of the party holding said primary election shall select the judges and clerks to serve at said primary election; and said judges and clerks shall possess all qualifications required of judges and clerks of general elections; provided, that in cities where there is a city central committee elected by the voters of said political party, then said city central committee shall select the judges and clerks to serve at any primary election for the selection of municipal nominees. Provided, further, that in said primary election the judges and clerks shall be of the same political party for which said primary election is held.

SEC. 2. This Act is necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage.

Approved February 7, 1911.

ACT 47.

AN ACT to make general election days legal holidays in Arkansas.

SECTION

1. All general biennial election days declared legal holidays in all respects.
2. Act in effect from passage.

Be It Enacted by the General Assembly and the People of the State of Arkansas:

SECTION 1. All general biennial election days shall be and are hereby declared legal holidays to all intents and purposes, whatsoever, except for the bus-

iness of holding elections and the same are hereby set apart as days sacred to free, fair, honest and untrammelled elections in Arkansas.

SEC. 2. This Act shall be in force and effect from and after its passage.

Approved February 24, 1911.

ACT 72.

AN ACT to amend section 1746 of Kirby's Digest of the Statutes of the State of Arkansas.

SECTION

1. Prohibits betting or wagering on elections and the penalty for violating same.
2. Act takes effect from passage.

Be It Enacted by the People of the State of Arkansas:

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That section 1746 of Kirby's Digest be amended to read as follows:

"Section 1746. Every person who shall make any bet or wager upon the result of any general, special or primary election in this State, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than fifty dollars."

SEC. 2. This Act shall take effect and be in force from and after its passage.

Approved March 3, 1911.

ACT 371.

AN ACT to provide for the contest of primary elections.

SECTION

1. Defines what constitutes eligibility to vote in primary elections.
2. Procedure for contest by defeated candidate in said election.
3. Filing of complaint.
4. Contestant allowed copy of poll books of said election; condition.
5. Time allowed for taking testimony. Notice and manner of taking.
6. Committee authorized to examine evidences of said election; other powers and duties of said committee.
7. Act does not repeal Act 165 of Acts of 1909, unless in conflict herewith.
8. Laws in conflict repealed; Act in effect from passage.

Be It Enacted by the People of the State of Arkansas:

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That all persons who are qualified electors under the laws of this State, and who are members of a political party under whose direction and supervision the primary is held, but no others, shall be entitled to vote in primary elections in this State.

SEC. 2. That any candidate for any elective office before any primary election of any political party of this State, who has been defeated, as shown by the returns of the primary election, for the nomination for the office for which he was a candidate, may bring a contest before the State Central Committee, under whose direction and supervision the primary was held, if he was a candidate for any State office, or before the district central committee, under whose direction and supervision the primary was held, if he was a candidate for any district office, or before the county central committee, under whose direction and supervision the primary was held, if he was a can-

didate for any county or township office, or before the city central committee, under whose supervision and direction the primary was held, if he was a candidate for any office of any city or town. And any contest before the State Central Committee, or before any district central committee of any district may be taken by appeal to the State convention of the political party under whose supervision and direction the primary was held. Said appeal shall be taken and perfected by the party appealing filing, with the clerk of the committee before whom the contest was brought, his notice of appeal in writing, and it shall then be the duty of the clerk of the committee to transmit to the clerk of the State Central Committee all of the original papers, documents and evidences reduced to writing, together with the findings of the committee trying the contest, and the secretary of the State Central Committee shall lay the entire record before the State convention, which shall decide the same upon the record filed. If the contest be for any county, or township, or city or town office, the decision of the county central committee, or the city central committee shall be final. For the purposes of this Act, representatives in the lower house of the General Assembly shall be deemed county officers and circuit judges, chancellors, prosecuting attorneys, railroad commissioners and State senators shall be deemed district officers.

SEC. 3. The contestant shall begin his action by filing, within thirty days after said primary, with the secretary of the committee before whom the contest is to be brought under the provisions of section 2 of this Act, his complaint in duplicate, setting out therein his specifications or grounds of contest. The secretary of the committee, before whom the contest is filed, shall notify the contestee within three days after the filing of the complaint by the contestant, and shall deliver to the contestee the duplicate copy of the contestant's complaint and specifications. The contestee shall be

allowed five days from the day he is notified of the pendency of the contest, in which to answer the complaint of the contestant and file counter specifications.

SEC. 4. The contestant may, within ten days from the date of any primary election, obtain from the judges, or any one of them having the same, or from the officer of the central committee, having the custody of the same, a copy of the poll books of said primary election, showing the name of each person voting thereat and the number of his ballot, by making demand in writing upon the election judge or judges having custody of the poll books, or upon the officer of the central committee having the custody of the same. Provided, that before the contestant shall be entitled to a copy of said poll books he shall notify the contestee, in writing, of his intention to demand such copy at least two days before said demand shall be made, stating in said notice the day the demand will be made. Should either of such parties refuse to give to the contestant a copy of the poll books, when demand has been made in accordance with the provisions of this section, he shall be deemed guilty of a misdemeanor and be punished by a fine of not less than one hundred and not more than three hundred dollars.

SEC. 5. The contestant shall be allowed five days in which to take his testimony, after the contestee has filed his answer, and the contestee shall be allowed a like period in which to take his testimony, if the contest be for a county, city or a town office as defined in this Act; if the contest be for State senator, prosecuting attorney, circuit judge or chancellor the contestant and contestee shall be allowed ten days each in which to take their testimony; if the contest be for Congressman, railroad commissioner or any State office the contestant and contestee shall each be allowed twenty days in which to take his testimony. Notice of the intention to take testimony shall be given to the opposite party in the same manner and for the same time that notice is now required to be given for the taking of depositions.

Testimony may be taken upon affidavits or depositions. The parties shall be privileged to call witnesses to testify orally before the committee trying the contest; provided, he gives the opposite party notice of his intention so to do.

SEC. 6. The committee trying the contest shall have the power and authority to take or receive, from the election judge or judges having the custody of the poll books and ballots, or from the officer of the committee having custody of the same, the original poll books, tally sheets, ballot boxes and ballots, and shall have the power and authority to examine the same and shall be required, on motion of either party, to open the ballot boxes and recount the ballots. They shall have power to purge the ballot of all illegal ballots, including those of any persons who are known to be members of any political party other than that under whose supervision and direction the primary election was held. They shall also have the power and it shall be their duty to award a certificate of nomination to the person who received the greatest number of legal votes in said primary. The findings of said committee shall be final, except in those cases wherein an appeal is provided for in this Act; provided, nothing in this Act shall be so construed as to prevent any person from pursuing any remedy he may have in any of the courts of this State.

SEC. 7. This Act shall not be construed as repealing any part of Act No. 165 of the Acts of 1909, unless the same be in conflict herewith.

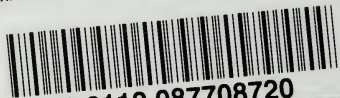
SEC. 8. All laws and parts of laws in conflict herewith are hereby repealed, and this Act shall take effect and be in force from and after its passage.

Approved May 31, 1911.





UNIVERSITY OF ILLINOIS-URBANA
324.767 AR4D C001 1911
Arkansas election code.



3 0112 087708720

Caylord
Ald Free
26096